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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1905.

No. 269.

THE UNITED STATES, APPELLANT,

vs.

THE AMERICAN SUGAR REFINING COMPANY OF NEW YORK.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

FILED MAY 23, 1905.

(19770.)

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30485—05——1

1 At a stated term of the United States Circuit Court for the Southern District of New York, held in the United States court and post-office building in the city of New York, on the 13th day of May, A. D. 1904.

Present: Hon. E. Henry Lacombe, circuit judge.

In the matter of the application of the American Sugar Refining Company of New York for a review of the decision of the Board of the United States General Appraisers as to the rate, etc., of duty on certain merchandise imported by said company per steam-ships "Vigilancia" July 14 03, "Straits of Dover" June 23 03, "Matanzas" Aug. 12 03, "Pendleton" Aug. 1 03, "Mohican" July 28 03, "Tresco" Aug. 25 03, "Ulriken" July 9 03, "Curityba" Aug. 4 03, "Miramar" Aug. 5 03, "Massapequa" Aug. 14 03, "Seneca" Aug. 10 03, "Curityba" Sept. 29 03, "Falcon" Aug. 19 03, "Westgate" Aug. 17 03, "Olinda" Sept. 18 03, "Matanzas" Sept. 10 03, "Mexico" Sept. 2 03.

Upon reading and filing the petition herein and upon motion of Parsons, Closson & McIlvaine, attorneys for the petitioner, it is ordered that the Board of United States General Appraisers, sitting at the port
2 of New York, return to this court the record and evidence taken by them in the above matter, together with a certified statement of the facts involved and their decision thereon.

E. Henry Lacombe,
Circuit Judge.

United States Circuit Court for the Southern District of New York.

In the matter of the application of the American Sugar Refining Company of New York for a review of the decision of the Board of General Appraisers as to the rate and amount of duty on certain merchandise imported by said company, per steam-ships "Vigilancia" July 14 03, "Straits of Dover" June 22 03, "Matanzas" Aug. 12 03, "Pendleton" Aug. 1 03, "Mohican" July 28 03, "Tresco" Aug. 25 03, "Ulriken" July 9 03, "Curityba" Aug. 4 03, "Miramar" Aug. 5 03, "Massapequa" Aug. 14 03, "Seneca" Aug. 10 03, "Curityba" Sept. 29 03, "Falcon" Aug. 19 03, "Westgate" Aug. 17 03, "Olinda" Sept. 18 03, "Matanzas" Sept. 10 03, "Mexico" Sept. 2 03.

To the honorable the Circuit Court of the United States for the Southern District of New York.

Your petitioner, a corporation duly organized and existing under the laws of the State of New York, being dissatisfied with the decision
3 made on the 28th day of April, 1904, by the Board of General Appraisers (designated by the Secretary of the Treasury for and on duty at said port, pursuant to the act of Congress approved June 10, 1890, entitled "An act to simplify the laws in relation to collection of the revenue"), sustaining the decision of the collector of customs at the port of New York as to the construction of the law and the facts respecting the classification of certain merchandise, to wit, a certain sugar

imported per steamships "Vigilancia" July 14 03, "Straits of Dover" June 23 03, "Matanzas" Aug. 12 03, "Pendleton" Aug. 1 03, "Mohican" July 28 03, "Tresco" Aug. 25 03, "Ulriken" July 9 03, "Curityba" Aug. 4 03, "Miramar" Aug. 5 03, "Massapequa" Aug. 14 03, "Seneca" Aug. 10 03, "Curityba" Sept. 29 03, "Falcon" Aug. 17 03, "Olinda" Sept. 18 03, "Matanzas" Sept. 10 03, "Mexico" Sept. 2 03, and as to the rate of duty imposed thereon under such classification, such merchandise being owned and having been entered for consumption by your petitioner, respectfully makes application to the court for a review of the questions of law and fact involved in such decision, and hereby makes the following concise statement of the errors of law and fact complained of, to wit:

The said merchandise was classified and assessed for duty at the rates provided in section 209 of the tariff act of July 24, 1897, and the entries thereof were liquidated accordingly.

The said owner and importer being dissatisfied with the decision assessing duty as aforesaid gave notice within ten days after said liquidation of duty, setting forth the reasons of his objections thereto, claiming said merchandise to be dutiable on the basis provided in the reciprocity treaty between the United States and Cuba.

4 Whereupon the invoices and all papers and exhibits connected therewith were duly transmitted to the said Board of General Appraisers, which Board, proceeding to hear and determine the questions of law and fact involved, sustained the collector's said decision in the premises. The record of their decision to this effect appears in communications addressed to the collector of the port under date of April 28, 1904, copies of which are hereto attached and made part hereof.

And the errors of law and fact in the decision of said Board in this regard herein complained of your petitioner states:

1. That said Board were in error: In holding that the importations of the merchandise in question, or any of them, were made or the entries, or any of them, perfected prior to the time the reciprocity treaty went into effect between the United States and the Republic of Cuba.

2. In holding that the goods, or any of them, were dutiable at the rates provided for such merchandise under the tariff act of July 24, 1897, or that such was the law of the land at the time the importation, or any of them, were made.

3. In not holding that under the act of Congress approved December 17th, 1903, the treaty of reciprocity between the United States and Cuba went into effect on the 10th day after the exchange of the ratifications thereof, viz, on the 10th day of April, 1903.

For the foregoing reasons the decision of the Board in sustaining the action of the collector in assessing the full rates of duty upon said merchandise as provided in the tariff act of 1897 was illegal and void, and said merchandise should have been assessed at such rates subject to the reduction of twenty per centum as provided by the treaty of reciprocity between the United States and Cuba.

5 Accordingly your petitioner respectfully prays this court to order the said Board of General Appraisers to return to the court the record and evidence taken by the said Board, together with a certified statement of the facts involved in the case, and of their decision thereon,

and thereupon to proceed to review the said decision, and to determine the questions of law and fact involved in the same.

THE AMERICAN SUGAR REFINING COMPANY OF NEW YORK.
By ARTHUR DONNER, *Treasurer, Petitioner.*

PARSONS, CLOSSON & MCILVAINE,
Attorneys for Petitioner, 52 William street,
Borough of Manhattan, New York.

UNITED STATES GENERAL APPRAISERS,
New York, Apr. 28, '04.

In the matter of protests 100011, etc., of American Sugar Refining Company of New York against the assessment of duty by the collector of customs at the port of New York.

Before Board 3 (Waite, Somerville, and Hay, general app.).

Somerville, general appraiser: The importations in question consist of sugar, and were all made, and entries of the goods perfected, prior
6 to the time the reciprocity treaty went into effect between the United States and the Republic of Cuba. (Note treaty cited in T. D. 24836.) The claim is made in the protests that the importers are entitled to the reduced rates of duty on sugar provided in said treaty. The rule is well settled that, except as to statutes purely remedial, a retroactive operation will not be given to a statute unless it is manifest from its terms that such is the legislative intent. In re Bunker, G. A. 5555 (T. D. 24941), and cases cited; Chew Heong v. United States (112 U. S., 536; 5 Sup. Ct. Rep., 255). The goods were clearly dutiable at the rates provided for such merchandise under the tariff act of July 24, 1897, which was the law of the land at the time the importations were made. The protests are all overruled and the collector's decision affirmed in each instance.

(Endorsed:) U. S. Circuit Court. Filed May 13, 1904, Southern District, New York. John A. Shields, clerk.

7 United States Circuit Court for the Southern District of New York.

In the matter of the application of The American Sugar Refining Company of New York for a review of the decision of the Board of United States General Appraisers as to the rate, etc., of duty on certain merchandise imported by said company per steamships "Vigilancia," July 14 03, "Straits of Dover," June 23 03, "Matanzas," Aug. 12 03, "Pendleton," Aug. 1 03, "Mohican," July 28 03, "Tresco," Aug. 25 03, "Ulriken," July 9 03, "Curityba," Aug. 4 03, "Miramar," Aug. 5 03, Massapequa," Aug. 14 03, "Seneca," Aug. 10 03, "Curityba," Sept. 29 03, "Falcon," Aug. 19 03, "Westgate," Aug. 17 03, "Olinda," Sept. 18 03, "Matanzas," Sept. 10 03, "Mexico," Sept. 2 03.

Know all men by these presents that I, Henry C. Mott, of the borough of Brooklyn, city of New York, am held and firmly bound unto the United States of America in the sum of one hundred dollars ($100), to

be paid to the said United States of America, for the payment of which well and truly to be made, I bind myself, my heirs, executors, and administrators.

Sealed with my seal and dated the twenty-third day of May, 1904.

[SEAL.]

Wherefore the above-named The American Sugar Refining Company has applied or will apply to the Circuit Court of the United States
8 for the Southern District of New York for a review of the questions of law and fact involved in the decision of the Board of United States General Appraisers, at the port of New York, upon the entry of certain merchandise as above mentioned:

Now, therefore, the condition of this obligation is such that if the above-named applicant shall prosecute said matter, application, or proceeding to effect and pay all damages and costs if it fail to make said matter, application, or proceeding good, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

HENRY C. MOTT.

Sealed and delivered and taken and acknowledged before me this 23rd day of May, 1904.

ALBERT S. WRIGHT,
Notary Public, N. Y. Co.

UNITED STATES OF AMERICA,
Southern District of New York, County of New York, ss:

On this 23rd day of May, 1904, before me personally appeared Henry C. Mott, to me known to be the individual who executed the above bond, and who, being duly sworn, deposes and says that he is a resident of the eastern district of New York, and that he is worth the sum of two hundred dollars ($200) over and above all his just debts and liabilities, and duly acknowledged that he executed the same.

[SEAL.]

ALBERT S. WRIGHT,
Notary Public, N. Y. Co.

(Endorsed:) U. S. Circuit Court. Filed May 23, 1904. Southern District New York. John A. Shields, clerk.

9 In the Circuit Court of the United States for the Southern District of New York.

John E. Dowsing, [seal] chief clerk Board of U. S. General Appraisers.

In the matter of the application of the Sugar Refining Co. for the review of a decision of the Board of U. S. General Appraisers as to the rate, etc., of duty on certain sugar imported in vessels and on dates named herein.

Suit No. 3543. Return of the Board of United States General Appraisers to the order of Hon. E. Henry Lacombe, circuit judge.
Dated New York, July 21, 1904.

The Board of United States General Appraisers, sitting at New York, in response to the order of the court in the above matter, make the following return of the record and evidence taken by them in the above matter and of the facts involved therein as ascertained by them:

They state that letters were received from the collector of customs at New York, submitting, under the provisions of section 14 of the act of June 10, 1890, the protests described as follows:

Colls. No.	Board No.	Protestants.	Vessel.	Date of entry.
22188	100011	The American Sugar Refining Co.	Vigilancia.	July 14 03.
22193	100012	"	Strs. of Dover.	June 22 "
22726	100013	"	Matanzas.	Aug. 12 "
22880	100014	"	Pendleton.	Aug. 1 "
22892	100015	"	Mohican.	July 28 "
22894	100016	"	Tresco.	Aug. 25 "
22795	100088	"	Afriken.	July 9 "
23465	100089	"	Curityba.	Aug. 4 "
23982	100090	"	Miramar.	" 5 "
23884	101008	"	Seneca.	" 10 "
24245	101007	"	Massapequa.	" 14 "
24542	101331	"	Curityba.	Sept. 29 "
24677	102255	"	Falcon.	Aug. 19 "
25272	103307	"	Westgate.	" 17 "
26162	103608	"	Olinda.	Sept. 18 "
25821	103609	"	Matanzas.	" 10 "
26324	103610	"	Mexico.	" 3 "
24679	103615	"	Cienfuegos.	" 1 "
24771	103616	"	Vidar.	" 19 "
25274	103617	"	Tripoli.	Aug. 29 "
25819	103618	"	Jason.	Sep. 28 "
26138	103619	"	Frey.	" 9 "

A copy of the first of said letters and protest 100011 are annexed as Exhibits A & B, and the others are returned under a separate cover marked "Protests in suit = 3543."

On April 28th, 1904, the Board rendered a decision upon said protests. A copy of the opinion, known as G. A. 5665, is annexed as Exhibit C. For convenience of reference a copy of G. A. 5724 is also annexed as Exhibit D, in which the subject under consideration is further discussed.

11 EXHIBIT A.

(Copy.)

U. S. CUSTOMS SERVICE, PORT OF NEW YORK.
Nov. 19, 1903.

BOARD OF U. S. GEN. APPRAISERS,
Port of New York.

GENTLEMEN: I submit the protest =22188 * of the American Sugar Refining Co. against the assessment of duty as made by this office on certain sugar imported by it in the vessel named * * *.

Claim is made in protest =22188 * that the sugar, being the product of Cuba, is entitled to a reduction of twenty per centum of duties, as the

result of a treaty said to have been negotiated between the United States and Cuba. The protests are also intended as a notification or claim for any reduction of duties that may be made by Congress in the future on Cuban products imported into the United States. As Congress had not passed any measure tending to reduce the duties on products of Cuba when imported into the United States at the time that these importations were made, or prior to the liquidation of the entries, this office rejects the claim of the protests and affirms its assessment of duty. Note G. A. 5415.

(Sd.) J. J. COUCH,
Spec. Dep. Coll.

12

EXHIBIT B.

[Custom house Dept., The American Sugar Refining Company of New York. H. O. Havemeyer, president; Arthur Donner, treasurer; C. R. Heike, secretary. P. O. box 2036.]

117 WALL STREET,
New York, Oct. 20, 1903.

TO THE COLLECTOR OF CUSTOMS,
Port of New York.

SIR: We hereby protest against your decision as to the rate and amount of duty exacted by you on 22,000 packages of sugar imported per SS "Vizcannia" on the 11th day of July, 1903, entry No. 137249, for the reason following, to wit:

1. By the terms of a treaty, or commercial convention, entered into between the United States and the Republic of Cuba on the 11th day of December, 1902, the ratifications of which (as provided therein) were exchanged by the respective governments on or before the 31st day of January, 1903, to go into effect on the tenth day after said exchange of ratifications, it is provided that a reduction of twenty per centum of the duties now levied on imported sugars under the tariff act of 1897 shall be made upon all sugars imported from, and the product of, the Republic of Cuba.

2. For the further reason that a clause in said treaty stipulating that the same shall not take effect until approved by the Congress, is inoperative, and that when approved by the Congress it should be con-
13 strued as having taken effect not later than the 10th day after the exchange of the ratifications thereof.

3. Your action therefore, in assessing duty upon said sugar in accordance with the tariff act of 1897, is unlawful and unjust.

Respectfully,

THE AMERICAN SUGAR REFINING COMPANY OF NEW YORK.
W. DENISON, *Attorney.*

100011.
Liq. Oct. 15 03.
(Endorsed:) Custom-house, New York, Oct. 21, 1903. Received.

EXHIBIT C.

Pa. 6, Cuban sugar.

UNITED STATES GENERAL APPRAISERS,
New York, Apr. 28, 1894.

In the matter of protest 100011, etc., of The American Sugar Refining Co. of New York, against the assessment of duty by the collector of customs at the port of New York. Before Board No. 3. G. A. 5665.

Somerville, general appraiser:

The importations in question consist of sugar, and were all
14 made, and entries of the goods perfected, prior to the time the reciprocity treaty went into effect between the United States and the Republic of Cuba. Note treaty cited in T. D. 24836. The claim is made in the protests that the importers are entitled to the reduced rates of duty on sugar provided in said treaty. The rule is well settled that, except as to statutes purely remedial, a retroactive operation will not be given to a statute, unless it is manifest from its terms that such is the legislative intent. In re Bunker, G. A. 5555 (T. D. 24941), and cases there cited. Chew Heong v. U. S., 112 U. S., 536; 5 Sup. Ct. Rep., 255. The goods were clearly dutiable at the rates provided for such merchandise under the tariff act of July 24, 1897, which was the law of the land at the time the importations were made. The protests are all overruled, and the collector's decision affirmed in each instance.

(Sd.) BYRON S. WAITE,
H. M. SOMERVILLE,
EUGENE G. HAY.
Board of U. S. General Appraisers.

Schedule on page 2.

H.

EXHIBIT D.

(T. D. 25007—G. A. 5724.)

Cuban treaty.

1. The treaty or convention between the United States and the Republic of Cuba, fixing the rate of duty on certain imported merchandise, referred to in the proclamation of the President (T. D. 24836), did not take effect until the approval of the act by the Congress of the United States, which was on December 17, 1903.

2. Said convention can not be construed to have any retrospec-
15 tive operation, so as to apply to merchandise imported from Cuba into the United States prior to said date.

3. Whether the operation of said treaty was extended by the President's proclamation so as not to go into effect until December 27, 1903—Quære?

UNITED STATES GENERAL APPRAISERS,
New York, June 25, 1904.

In the matter of protests 106042, etc., of A. G. Hutcheson & Co., et al., against the assessment of duty by the collector of customs at the port of New York.

Before Board 3 (Waite, Somerville, and Hay, General Appraisers; signed by Lunt and Somerville, G. A.).

Somerville, General Appraiser:

These protests cover importations from the island of Cuba, which were assessed for duty under various paragraphs of the tariff act of 1897 at the rates of duty provided by said act. The importers claim the benefits of the treaty or convention between the United States and the Republic of Cuba, which was proclaimed by the President on December 17, 1903 (T. D. 24836).

The principal question presented for our decision is whether these importations are covered by the terms of said treaty, and this requires us to determine when the treaty actually went into effect. The goods to which the protests relate were all entered for consumption, and the entries were liquidated by the collector prior to December 17, 1903. Articles I and II of said treaty read as follows:

ARTICLE I.

During the term of this convention, all articles of merchandise being the product of the soil or industry of the United States, which are now imported into the Republic of Cuba free of duty, and all articles of merchandise being the product of the soil or industry of the Republic of Cuba which are now imported into the United States free of duty, shall continue to be so admitted by the respective countries free of duty.

ARTICLE II.

During the term of this convention all articles of merchandise not included in the foregoing Article I, and being the product of the soil or industry of the Republic of Cuba imported into the United States, shall be admitted at a reduction of twenty per centum of the rates of duty thereon as provided by the tariff act of the United States approved July 24, 1897, or as may be provided by any tariff law of the United States subsequently enacted.

Article XI of said treaty, fixing the time when the same shall go into effect, reads as follows:

ARTICLE XI.

The present convention shall be ratified by the appropriate authorities of the respective countries, and the ratifications shall be exchanged at Washington, District of Columbia, United States of America, as soon as may be before the thirty-first day of January, 1903, and the convention shall go into effect on the tenth day after the exchange of ratifications, and shall continue in force for the term of five (5) years from date of

going into effect, and from year to year thereafter until the expiration of one year from the day when either of the contracting parties shall give notice to the other of its intention to terminate the same.

17 By a resolution of March 19, 1903, the Senate of the United States had added to said Article XI these words:

This convention shall not take effect until the same shall have been approved by the Congress.

On December 17, 1903, Congress gave its approval to said treaty by an act to carry its provisions into effect, which was entitled "An act to carry into effect a convention between the United States and the Republic of Cuba, signed on the eleventh day of December, in the year nineteen hundred and two." The first section of said act provided, among other things, as follows:

Whenever the President of the United States shall receive satisfactory evidence that the Republic of Cuba has made provision to give full effect to the articles of the convention between the United States and the Republic of Cuba, signed on the eleventh day of December, in the year nineteen hundred and two, he is hereby authorized to issue his proclamation declaring that he has received such evidence, and thereupon on the tenth day after exchange of ratifications of such convention between the United States and the Republic of Cuba, and so long as the said convention shall remain in force, all articles of merchandise being the product of the soil or industry of the Republic of Cuba * * * and all other articles of merchandise being the product of the soil or industry of the Republic of Cuba imported into the United States shall be admitted at a reduction of twenty per centum of the rates of duty thereon, as provided by the tariff act of the United States. * * *

The contention of the importers is that the provisions of the treaty went into effect on April 10, 1903, which was ten days after the exchange of ratifications, occurring March 31, 1903.

18 The usual rule is that where a treaty by its own terms fails to fix a time at which it is to go into effect it is considered as concluded and operative on the exchange of ratifications. Armstrong v. Bidwell (124 Fed. Rep., 690) and cases there cited; Ex parte Ortiz (Cir. Ct., 100 Fed. Rep., 962); Dooley v. United States (182 U. S., 222; 21 Sup. Ct. Rep., 762).

It is clearly competent, however, for the Senate and the President, as constituting the treaty-making power, to provide that a treaty shall not go into effect until a time fixed in the future. A familiar instance of the exercise of this power is found in the practice of putting reciprocity treaties into effect upon the issuance of a Presidential proclamation. Field v. Clark (143 U. S., 649; 12 Sup. Ct. Rep., 495). In the present instance, as we have said, the treaty itself provided that it should not go into effect "until the same shall have been approved by the Congress," and the act of Congress approving it was not passed until the 17th day of December.

Some difficulty arises from the apparent repugnancy of certain clauses contained in the act of Congress approving the treaty, which, in one aspect, seems from its own language to indicate that it shall not go into effect until the President has received and passed on the evidence required to be considered by him, and which must be satisfactory to him, showing

that the Republic of Cuba had made provision to give full effect to the articles of the convention. Nevertheless, it declares that "thereupon, on the tenth day after the exchange of ratifications of such convention," the reduction of the rates of duty provided for shall take effect. The treaty was actually ratified on March 31, 1903, almost nine months before the act of Congress was passed. We are, nevertheless, of
19 opinion that the provisions of the treaty could not take effect until the time fixed by the resolution of the Senate of March 19, 1903, which declared that "this convention shall not take effect until the same shall have been approved by the Congress." This has reference to futurity, and the language of the resolution, having become a part of the treaty, must speak for itself. This follows from the general rule, often declared by the courts, that a retrospective operation will never be given to a law unless required by express command or by necessary implication. Chew Heong v. United States (112 U. S., 536); Murray v. Gibson (15 How., 421); In re Bunker, G. A. 5555 (T. D. 24941).

The case of United States v. Burr (159 U. S., 78; 15 Sup. Ct. Rep., 1002) is an authority which would sustain the view we have above expressed. The question was as to the time when the tariff act of August 28, 1894, went into effect. The first section of that act provided that "on and after the first day of August, eighteen hundred and ninety-four" the rates of duty provided by said act should be levied on articles imported from foreign countries. The act did not, however, become a law until August 28, 1894. It was, nevertheless, held by the court that the act had no retrospective operation and could not go into effect until August 28, 1894. This decision affirmed that made by the Board, In re Wolff et al., G. A. 2775 (T. D. 15381), and reversed the decision of the Circuit Court (66 Fed. Rep., 742).

The following language was used by Chief Justice Fuller, speaking for the court:

The contention is that the language of that section being free from all obscurity and ambiguity, there is no room for construction, and that the court is imperatively required to conclude that it was the inten-
20 tion of Congress that the act should have a retrospective operation as of August 1, 1894, although it did not become a law until after that date. It is conceded that the general rule is, as stated in United States v. Heth (3 Cranch, 398, 413), that "words in a statute ought not to have a retrospective application unless they are so clear, strong, and imperative that no other meaning can be annexed to them, or unless the intention of the legislature can not be otherwise satisfied;" and that the usual course in tariff legislation has been, inasmuch as some time is necessary to enable importers and business men to act understandingly, to fix a future date at which the statutes are to become operative. The question is not one of construction, but of intention as to the operative effect of this act, because of the existence of the particular date in section 1.

* * * * * * *

Moreover, in arriving at the true intention of Congress we can not treat section 1 as if it constituted the entire act, but must deduce the intention from a view of the whole statute and from the material parts of it.

Justice Fuller further observed:

The language of section 1 was that on and after the 1st of August there "shall" be levied; and of the second section that on and after the 1st day of August certain enumerated articles, when imported, "shall" be exempt from duty. In our judgment the word "shall" spoke for the future, and was not intended to apply to transactions completed when the act became a law.

We are of opinion that the protests are not well taken, the goods having all been imported prior to the passage of the act of Congress approving the treaty. It is unnecessary to determine whether the treaty

21 took effect on the 17th day of December, the day of the passage of the act, or ten days thereafter, as declared in the proclamation of the President. We merely decide that it did not take effect prior to its approval by Congress, leaving the other point open for future consideration.

The protests are overruled and the decision of the collector affirmed.

And for a certified statement of the facts involved in said matter, as ascertained by them, the said Board states that said facts are fully set forth in the decision aforementioned, and that no other facts were ascertained by said Board than such as are shown by said decision and other exhibits hereto attached.

B. S. WAITE,
H. M. SOMERVILLE,
EUGENE G. HAY,
Board of U. S. Appraisers.

(Endorsed:) U. S. Circuit Court. Filed Jul. 22, 1904. Southern District of New York. John A. Shields, clerk.

22 United States Circuit Court, Southern District of New York.

AMERICAN SUGAR REFINING CO., *vs.* UNITED STATES. } No. 3543.

WHEELER, J.

The convention for the reduction of 20% of the duties on Cuban products provided for exchange of ratification before January 31, 1903, which was extended two months; and for going into effect on the tenth day after the exchange of ratifications. On the 19th of March the Senate added to that article:

"This convention shall not take effect until approved by the Congress."

Ratifications were exchanged March 31, 1903. These importations of Cuban products were made between July 14 and September 9; duties were assessed without reduction, against which protests were made before or on October 21, 1903, and were submitted to the Board of General Appraisers. On December 17, 1903, Congress passed "An act to carry into effect" the convention, which provided that whenever the President shall receive satisfactory evidence that Cuba has made provision to give full effect to the convention, he was authorized to issue his proclamation

declaring that he had received such evidence, "and thereupon on the tenth day after exchange of ratifications of such convention between the United States and the Republic of Cuba, and so long as the said convention shall remain in force, all articles of merchandise being the product of the soil of industry of the Republic of Cuba * * * shall
23 be admitted at a reduction of twenty per cent of the rates of duty thereon." The President immediately made such proclamation. The Board overruled the protests April 28, 1904, and confirmed the assessment without reduction. From that decision this review is brought.

When the collector assessed the duty there was no law in force relating to it but the general tariff law, and his assessment was clearly right; but if the assessment of duties is going on until the Board is done with it, which seems to be the case, the question now is whether the decision of the Board was right, according to the law of the subject, when that decision was made.

If the President and Senate could fix duties by treaty without the concurrence of the Congress they did not attempt to in this matter. While it was open its taking effect was fixed upon the approval of the Congress, and it derives its force from the act of Congress. No question is understood to be made, and there seems to be no doubt but that Congress may well provide for the liquidation of duties at a different rate on goods imported before, and especially by reduction, which would be the disposing of what, for the relief of the importers, would be entirely within the power of Congress. (Stockdale vs. Insurance Co., 20 Wall., 323.) So far as the treaty went it was made very plain that the reduction was to commence on the tenth day after the exchange of ratifications. Congress did not leave the subject open to any construction by using any other expression, but took the same and thereby enacted of itself that "on the tenth day after exchange of ratifications * * * and so long as said convention shall remain in force all articles of merchandise being the product of the soil or industry of the Republic of Cuba * * *
shall be admitted at reduction of the rates of duty thereon."
24 Merchandise is being admitted for tariff purposes until the duties are finally liquidated, which as to this merchandise was not till after that act of Congress was passed. These views do not seem to be contrary to U. S. vs. Burr (159 U. S., 78). The intention of Congress appears to have been sought for there, and ascertained from other parts of the act than the one date left to stand after it had gone by; but here there are no such other provisions to control. This act affirms the treaty as it was made with this date in it and enacts the date itself in the same terms. The intention to relieve Cuban imports from that date seems clear.

Decision reversed.

H. B. Closson, *for plaintiff.*
Henry A. Wise, *Asst. U. S. Attorney, for United States.*

(Endorsed:) Circuit Court of the United States for the Southern District of New York. American Sugar Refining Co. vs. United States. Opinion, Wheeler, J. U. S. Circuit Court, Southern District of New York. Filed Mar. 10, 1905. John A. Shields, clerk.

25 At a stated term of the Circuit Court of the United States of America, for the Southern District of New York, held at the United States Circuit Court rooms in the post-office building in the city of New York, on the 22nd day of March, 1905.

Present: Hon. Hoyt H. Wheeler, judge.

In the matter of the application of The American Sugar Refining Company of New York, for a review of the decision of the Board of United States General Appraisers as to the rate and amount of duty on certain merchandise imported by said company per steamships "Vigilancia," July 14–03; "Straits of Dover," June 22–03; "Matanzas," Aug. 12–03; "Pendleton," Aug. 1–03; "Mohican," July 28–03; "Tresco," Aug. 25–03; "Ulriken," July 9–03; "Curityba," Aug. 4–03; "Miramar," Aug. 5–03; "Massapequa," Aug. 14–03; "Seneca," Aug. 10–03; "Curityba," Sept. 29–03; "Falcon," Aug. 19–03; "Westgate," Aug. 17–03; "Olinda," Sept. 18–03; "Matanzas," Sept. 10–03; "Mexico," Sept. 2–03.

The above cause having come on for hearing and determination before this court on the application of the American Sugar Refining Company of New York, importers, for a review of the questions of law and fact involved in the decisions of the Board of United States General Appraisers herein, and on the return of the said Board of General Appraisers of the record and evidence taken by them with their certified statement of the facts involved therein, together with their decision thereon;

Now, after hearing Henry A. Wise, assistant United States attorney, for affirmance, and Henry B. Closson, of counsel for the said importers, for reversal, it is, upon motion of Parsons, Closson & McIlvaine, attorneys for the said importers.

26 Ordered, adjudged, and decreed that there was error in the said proceedings before said Board of General Appraisers, and that their decisions herein be, and the same hereby are, in all things reversed.

HOYT H. WHEELER, *Judge.*

Approved as to form:

PARSONS, CLOSSON & MCILVAINE,
Attys. for Importers.

HENRY L. BURNETT,
U. S. Attorney.

(Endorsed:) U. S. Circuit Court for the Southern District of New York. In the matter of the application of The American Sugar Refining Company of New York, for a review of the decision of the Board of United States General Appraisers as to the rate, etc., on merchandise imported per "Vigilancia," etc. Judgment of reversal. Parsons, Closson & McIlvaine, attorneys for importers, 52 William street, New York City. U. S. Circuit Court, Southern District of New York. Filed Mar. 22, 1905. John A. Shields, clerk.

27 United States Circuit Court, Southern District of New York.

THE AMERICAN SUGAR REFINING COMPANY of New York
vs.
THE UNITED STATES OF AMERICA.

To the United States Circuit Court, Southern District of New York:

The Attorney-General of the United States hereby applies for the allowance of an appeal to the Supreme Court of the United States from the decision and judgment of the U. S. Circuit Court entered herein on the 22nd day of March, 1905.

Dated April 17th, 1905.

W. H. MOODY,
Attorney-General,
Per HENRY L. BURNETT,
U. S. Attorney.

The foregoing application is granted and appeal allowed.

Dated New York, April 17th, 1905.

E. HENRY LACOMBE,
Judge of the U. S. Circuit Court, Southern District of New York.

(Endorsed:) U. S. Circuit Court, Southern District of New York. The United States of America, appellant, vs. The American Sugar Refining Company of New York, appellee. Application for and allowance of appeal. Henry L. Burnett, U. S. attorney. To Parsons, Closson & McElvaine, esqs., 52 William st., N. Y. City, attorneys for appellee. Copy received. Parsons, Closson & McElvaine, attorneys for appellees. U. S. Circuit Court, Southern District of New York. Filed Apr. 19, 1905. John A. Shields, clerk.

28 In the Supreme Court of the United States.

THE UNITED STATES, APPELLANT,
vs.
THE AMERICAN SUGAR REFINING COMPANY of New York, appellee.

The United States Circuit Court for the Southern District of New York, which entered the decree reversing the decision of the Board of United States General Appraisers herein, erred as follows:

I. The Circuit Court erred in reversing the decision of the Board of General Appraisers therein.

II. The Circuit Court erred in not affirming the decision of the said Board.

III. The Circuit Court erred in substantially holding that by the terms of the treaty or commercial convention, signed by the representatives of the United States and the Republic of Cuba on the 11th day of December, 1902, said treaty or commercial convention became operative and went into effect on the 10th day of April, 1903.

IV. The Circuit Court erred in substantially holding that the resolution of the United States Senate, on March 19, 1903, which referred to

said treaty or commercial convention, and was in the following language, to wit, "this convention shall not take effect until approved by the Congress," did not alter or repeal the following provision in said treaty, to wit, "the present convention shall be ratified by the appropriate authorities of the respective countries and the ratifications shall be exchanged at Washington, District of Columbia, United States of America, as soon as may be before the thirty-first day of January,
29 1903, and the convention shall go into effect on the tenth day after the exchange of ratifications, * * *."

V. In that the Circuit Court erred in substantially holding that said treaty, or convention, when approved by the Congress, December 17th, 1903, took effect and became operative as of the 10th day of April, 1903.

VI. In that the Circuit Court erred in substantially holding that the protest of the importer which was filed in October, 1902, when said treaty or convention had not received the approval of the Senate of the United States, and had not been approved by the Congress, was a valid protest.

VII. The Circuit Court erred in substantially holding that an importer may protest against a valid assessment of duties made pursuant to a then existing law, and avail himself by such protest of some subsequently enacted law to the contrary.

VIII. The Circuit Court erred in substantially holding that the act of Congress, December 17th, 1903, entitled "An act to carry into effect a convention between the United States and the Republic of Cuba, signed on the eleventh day of December, in the year nineteen hundred and two," was retroactive and provided for a reduction in the rates on all merchandise imported from Cuba subsequent to April 10th, 1903.

IX. The Circuit Court erred in substantially holding that at the time of the liquidation and assessment of duties upon the merchandise in question by the collector of the port of New York that the tariff act of July 24th, 1897, relating to such merchandise, had been repealed or modified in any manner.

X. The Circuit Court erred in not holding that at the time of the assessment and liquidation of duties upon the merchandise in question the tariff act of July 24th, 1897, was the only law relating to
30 assessment of duties upon such merchandise, and such assessment and liquidation was final and conclusive.

XI. The Circuit Court erred in not holding that the protest of the importer against the assessment and liquidation of duties upon the merchandise in question was insufficient, in that it did not point out any then existing law under which said importers claimed such merchandise should be taxed.

XII. The Circuit Court erred in not holding that no treaty or convention can be made between the United States and any other country without the consent and approval of the Senate, and that the consent and approval of the United States Senate to the said treaty, between the United States and Cuba, was a conditional consent and approval dependent upon the approval by the Congress of said treaty.

XIII. The Circuit Court erred in not holding that the approval of said treaty by the Senate, attached thereto on the 17th day of December,

1903, and that until then said treaty or convention had been of no force or virtue.

XIV. The Circuit Court erred in not holding that the act of Congress of December 17th, 1903, approving said treaty or convention, could not and did not alter or vary the approval of said treaty or convention by the Senate, and that said approval by said Senate was not retroactive or retrospective, but gave force to and put said treaty or convention into effect upon the said 17th day of December, 1903.

XV. The Circuit Court erred in not holding that said treaty or convention did not take effect until the 17th day of December, 1903.

XVI. The Circuit Court erred in not holding that said treaty had no retrospective operation.

31 In order that the foregoing assignment of errors may be and appear of record, the United States presents the same to the court, and prays that such disposition be made thereof as in accordance with law and the statutes of the United States in such cases made and provided, and the United States prays a reversal of the decretal order and decree of reversal made and entered by said court.

Dated New York, April 17th, 1905.

HENRY L. BURNETT,
United States Attorney for the Southern District of New York.

(Endorsed:) U. S. Supreme Court. The United States, appellant, vs. The American Sugar Refining Co. of New York, appellee. Assignment of errors. Henry L. Burnett, United States attorney, attorney for U. S. U. S. Circuit Court, Southern District of New York. Filed Apr. 17, 1905. John A. Shields, clerk.

32 UNITED STATES OF AMERICA, *ss*:

To the American Sugar Refining Company of New York:

You are hereby cited and admonished to be and appear before the United States Supreme Court at the city of Washington, on the 15th day of May, 1905, pursuant to an appeal on the part of the United States filed in the clerk's office of the Circuit Court of the United States for the Southern District of New York, in a certain suit or proceeding entitled "The United States of America, appellant, vs. The American Sugar Refining Company of New York, appellee," to show cause, if any there be, why the decision of the U. S. Circuit Court in the said appeal mentioned should not be reversed, modified, or corrected, and speedy justice should not be done in that behalf.

Given under my hand at the city of New York, in the Southern District of New York, on the 17th day of April, 1905.

E. H. LACOMBE,
Judge of the U. S. Circuit Court,
Southern District of New York.

HENRY L. BURNETT,
U. S. Attorney, on behalf of the United States, appellant.

(Endorsed:) U. S. Supreme Court. The United States of America, appellant, vs. The American Sugar Refining Company of New York,

appellee. Citation. Henry L. Burnett, U. S. attorney. To Parsons, Closson & McElvaine, esqs., attorneys for appellee, 52 William st., N. Y. City. Copy received, Parsons, Closson & McElvaine, April 19, 1905. U. S. Circuit Court, Southern District of New York. Filed Apr. 19, 1905. John A. Shields, clerk.

33 UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, John A. Shields, clerk of the Circuit Court of the United States of America for the Southern District of New York, in the Second Circuit, do hereby certify that the foregoing pages, numbered from one to thirty-two, inclusive, contain a true and complete transcript of the record and proceedings had in said court, in the cause entitled "The United States of America, appellant, against The American Sugar Refining Company of New York, appellee," as the same remain of record and on file in my office.

In testimony whereof I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the Southern District of New York, in the Second Circuit, this 22nd day of May, in the year of our Lord one thousand nine hundred and five, and of the Independence of the said United States the one hundred and twenty-ninth.

[SEAL.] JOHN A. SHIELDS,
Clerk.

34 (Indorsed:) United States Supreme Court. The United States of America, appellants, vs. The American Sugar Refining Co., appellee. (No. 3543.) Transcript of record from the Circuit Court of the United States for the Southern District of New York. Office of the clerk Supreme Court U. S. Received May 23, 1905.

(Indorsement on cover:) File No. 19770. S. New York, C. C. U. S. Term No. 269. The United States, appellant, vs. The American Sugar Refining Company of New York. Filed May 23d, 1905. File No. 19770.

O

In the Supreme Court of the United States.

OCTOBER TERM, 1905.

THE UNITED STATES, APPELLANT,
v.
THE AMERICAN SUGAR REFINING COMPANY of New York. } No. 269.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

BRIEF FOR THE UNITED STATES.

STATEMENT.

During the months of June, July, August, and September, 1903, the American Sugar Refining Company made certain importations of sugar through the port of New York. Duties were assessed thereon by the collector at the rates provided in section 209 of the tariff act of July 24, 1897 (30 Stat., 168), and the entries liquidated accordingly. Against this action the company protested, claiming that said merchandise was dutiable on the basis fixed by the reciprocity treaty between the United States and Cuba, signed December 11, 1902, which provided for a 20 per cent reduction, but which had not at the time of said protest been

approved by Congress, as it in terms required, or proclaimed by the President.

The Board of General Appraisers sustained the action of the collector (R., 8), but the Circuit Court reversed their decision (R., 11, 12), holding that the treaty and the act of Congress of December 17, 1903, passed in execution of it, went into effect retroactively on April 10, 1903, the tenth day after ratifications of the treaty were exchanged. From that judgment an appeal has been taken to this court.

The treaty, as signed, provided (33 Stat., 2136, 2142):

ARTICLE XI.

> The present convention shall be ratified by the appropriate authorities of the respective countries, and the ratifications shall be exchanged at Washington, District of Columbia, United States of America, as soon as may be before the thirty-first of January, 1903, *and the convention shall go into effect on the tenth day after the exchange of ratifications*, and shall continue in force for the term of five (5) years from date of going into effect, and from year to year thereafter until the expiration of one year from the day when either of the contracting parties shall give notice to the other of its intention to terminate the same.

By a supplemental convention signed January 26, 1903 (33 Stat., 2145), it was provided:

> The respective ratifications of the said convention shall be exchanged as soon as possible, and within two months from January 31, 1903.

By resolution of March 19, 1903, the Senate added the following amendment at the end of Article XI:

> This convention shall not take effect until the same shall have been approved by the Congress.

December 17, 1903 (33 Stat., 3), Congress passed an act entitled "An act to carry into effect a convention between the United States and the Republic of Cuba, signed on the eleventh day of December, in the year nineteen hundred and two," which provided (sec. 1):

> That whenever the President of the United States shall receive satisfactory evidence that the Republic of Cuba has made provision to give full effect to the articles of the convention between the United States and the Republic of Cuba, signed on the eleventh day of December, in the year nineteen hundred and two, he is hereby authorized to issue his proclamation declaring that he has received such evidence, *and thereupon, on the tenth day after exchange of ratifications of such convention* between the United States and the Republic of Cuba, *and so long as the said convention shall remain in force*, all articles of merchandise being the product of the soil or industry of the Republic of Cuba, which *are now* imported into the United States free of duty, *shall continue* to be so admitted free of duty, and all other articles of merchandise being the product of the soil or industry of the Republic of Cuba imported into the United States *shall be admitted* at a reduction of twenty

per centum of the rates of duty thereon, as provided by the tariff act of the United States approved July twenty-fourth, eighteen hundred and ninety-seven, or as may be provided by any tariff law of the United States subsequently enacted. The rates of duty herein granted by the United States to the Republic of Cuba are and shall continue *during the term of said convention* preferential in respect to all like imports from other countries: *Provided*, That while said convention is in force no sugar imported from the Republic of Cuba, and being the product of the soil or industry of the Republic of Cuba, shall be admitted into the United States at a reduction of duty greater than twenty per centum of the rates of duty thereon, as provided by the tariff act of the United States approved July twenty-fourth, eighteen hundred and ninety-seven, and no sugar the product of any other foreign country shall be admitted by treaty or convention into the United States while this convention is in force at a lower rate of duty than that provided by the tariff act of the United States approved July twenty-fourth, eighteen hundred and ninety-seven: *And provided further*, That nothing herein contained shall be held or construed as an admission on the part of the House of Representatives that customs duties can be changed otherwise than by an act of Congress originating in said House.

The same day (December 17, 1903) the President issued his proclamation (33 Stat., 2136), which, after setting forth the treaty and the act of Congress and reciting the above facts, together with the fact that

ratifications of said convention had been exchanged on March 31, 1903, declared:

> And whereas satisfactory evidence has been received by the President of the United States that the Republic of Cuba has made provision to give full effect to the articles of said convention:
>
> Now, therefore, be it known that I, Theodore Roosevelt, President of the United States of America, in conformity with the said act of Congress, do hereby declare and proclaim the said convention, as amended by the Senate of the United States, to be in effect *on the tenth day from the date of this my proclamation.*

The supplemental convention was also proclaimed the same day. (33 Stat., 2145.)

ARGUMENT.

The Treaty and Act were intended to be prospective and coterminous in their operation.

There can be no doubt as to the meaning of the treaty. The original stipulation that it was to take effect ten days after the exchange of ratifications was superseded by the amendment of the Senate, ratified and approved by Cuba, that the treaty should not take effect until approved by the Congress. Clearer language could not have been used to indicate the intention of the parties that the treaty should operate prospectively from said approval. As will hereafter be shown, their subsequent action has been in accordance with that intention.

Looking now at the act, we find that it was passed, as its title states, to carry into effect the treaty; that its provisions in regard to the importation of articles from Cuba are identical with those of the treaty, and are expressly declared to be coterminous therewith, and that the language of the act is entirely prospective. It provides that the President, whenever he *shall* receive satisfactory evidence that the Republic of Cuba has made provision to give full effect to the treaty, *shall* issue his proclamation declaring that he has received such evidence, and "*thereupon* on the tenth day after exchange of ratifications of such convention," "*and so long as said convention shall remain in force*," articles

imported from Cuba *shall* be admitted as therein provided.

The words "on the tenth day after exchange of ratifications" are in themselves prospective. But they are said to be retrospective because it appears from the proclamation of the President, *issued after the passage of the act*, that ratifications had been therefore exchanged. And herein seems to lie the true explanation of the use of those words, namely, that Congress was not advised at the time of the passage of the act that ratifications had been exchanged on March 31, 1903. The exchange of ratifications on that date was a matter of which the Executive alone was cognizant, and appears never to have been communicated to either House or published in any manner prior to the passage of the act.

On March 31, 1903—the date ratifications were exchanged—neither House of Congress was in session. The Fifty-seventh Congress terminated March 4, 1903, and the special session of the Senate of the Fifty-eighth Congress, which was convened March 5, 1903, adjourned March 19, 1903, the day of the adoption of the resolution requiring the approval of Congress to the treaty before it should take effect. (37 Cong. Rec., 1, 140.)

October 20, 1903, the President issued a proclamation convening a special session of Congress for the purpose of considering the treaty. The proclamation read (33 Stat., 2319):

> Whereas by the resolution of the Senate of March 19, 1903, the approval by Congress

of the reciprocal Commercial Convention between the United States and the Republic of Cuba signed at Habana on December 11, 1902, *is necessary before the said convention shall take effect;*

And whereas it is important to the public interests of the United States that the said convention *shall become operative as early as may be:*

Now, therefore, I, Theodore Roosevelt, President of the United States of America, by virtue of the power vested in me by the Constitution, do hereby proclaim and declare that an extraordinary occasion requires the convening of both Houses of the Congress of the United States at their respective chambers in the city of Washington on the 9th day of November next, at 12 o'clock noon, to the end that they may consider and determine whether the approval of the Congress shall be given to the said convention.

Pursuant to this proclamation Congress convened November 9, 1903, and on November 10 the President transmitted to the two Houses the following messages (37 Cong. Rec. 163, 164):

To the Senate and House of Representatives:

I have convened the Congress that it may consider the legislation necessary to put into operation the commercial treaty with Cuba, *which was ratified by the Senate at its last session, and subsequently by the Cuban Government.* I deem such legislation demanded not only by our interest, but by our honor. We can not with propriety abandon the course upon which we have have so wisely embarked. When the

acceptance of the Platt amendment was required from Cuba by the action of the Congress of the United States, this Government thereby definitely committed itself to the policy of treating Cuba as occupying a unique position as regards this country. It was provided that when the island became a free and independent republic she should stand in such close relations with us as in certain respects to come within our system of international policy; and it necessarily followed that she must also to a certain degree become included within the lines of our ecomic policy. Situated as Cuba is, it would not be possible for this country to permit the strategic abuse of the island by any foreign military power. It is for this reason that certain limitations have been imposed upon her financial policy, and that naval stations have been conceded by her to the United States. The negotiations as to the details of these naval stations are on the eve of completion. They are so situated as to prevent any idea that there is the intention ever to use them against Cuba, or otherwise than for the protection of Cuba from the assaults of foreign foes, and for the better safeguarding of American interests in the waters south of us.

These interests have been largely increased by the consequences of the war with Spain, and will be still further increased by the building of the Isthmian Canal. They are both military and economic. The granting to us by Cuba of the naval stations above alluded to is of the utmost importance from a military standpoint, and is proof of the good faith with which Cuba is treating us. Cuba has made great progress

since her independence was established. She has advanced steadily in every way. She already stands high among her sister republics of the New World. She is loyally observing her obligations to us, and she is entitled to like treatment by us.

The treaty submitted to you for approval secures to the United States economic advantages as great as those given to Cuba. Not an American interest is sacrificed. By the treaty a large Cuban market is secured to our producers. It is a market which lies at our doors, which is already large, which is capable of great expansion, and which is especially important to the development of our export trade. It would be indeed shortsighted for us to refuse to take advantage of such an opportunity, and to force Cuba into making arrangements with other countries to our disadvantage.

This reciprocity treaty stands by itself. It is demanded on considerations of broad national policy as well as by our economic interest. It will do harm to no industry. It will benefit many industries. It is in the interest of our people as a whole, both because of its importance from the broad standpoint of international policy, and because economically it intimately concerns us to develop and secure the rich Cuban market for our farmers, artisans, merchants, and manufacturers. Finally, it is desirable as a guaranty of the good faith of our nation toward her young sister Republic to the south, whose welfare must ever be closely bound with ours. We gave her liberty. We are knit to her by the memories of the blood and the

courage of our soldiers who fought for her in war; by the memories of the wisdom and integrity of our administrators who served her in peace and who started her so well on the difficult path of self-government. We must help her onward and upward, and in helping her we shall help ourselves.

The foregoing considerations caused the negotiation of the treaty with Cuba and its ratification by the Senate. They now with equal force support the legislation by the Congress which by the terms of the treaty is necessary to render it operative. A failure to enact such legislation would come perilously near a repudiation of the pledged faith of the nation.

I transmit herewith the treaty, *as amended by the Senate and ratified by the Cuban Government.*

THEODORE ROOSEVELT.

WHITE HOUSE, *November 10, 1903.*

To the Senate and House of Representatives:

It being required by the resolution of the Senate of March 19, 1903, that the approval of Congress shall be given to the reciprocal commercial convention between the United States and Cuba, signed December 11, 1902, *before the same shall take effect*, I transmit herewith the text of the said convention as amended by the Senate.

THEODORE ROOSEVELT.

WHITE HOUSE, *November 10, 1903.*

Neither of these messages contained any intimation that ratifications had been exchanged; nor did the text of the treaty transmitted therewith. (For text of treaty transmitted see H. R. Document

No. 2, 58th Cong., 1st sess., set out in Appendix hereto.) Congress was advised by said communications that the treaty as amended by the Senate had been ratified by the Cuban Government, but there was absolute silence as to the exchange of ratifications. Doubtless the President regarded that fact as unimportant, in view of the amendment of the Senate requiring the approval of Congress before the treaty should take effect. It will be observed that he did not transmit or in anywise refer to the supplemental treaty, by which the time for exchanging ratifications of the original treaty was extended from January 31 to March 31, 1903. The House, having had nothing to do with the making of that treaty and it not having been published, can not be presumed to have been officially cognizant of it. There was laid before them only the original treaty, which provided that ratification should be exchanged on or before January 31, 1903, and that it should take effect ten days thereafter, supplemented by the amendment added by the Senate that the treaty should not take effect until approved by the Congress. It was in the light of this information that the House acted. If the appellee's contention is correct, the House must have intended that the act should take effect ten days after January 31, 1903, while the Senate, which was advised of the supplemental treaty, must be supposed to have intended it to take effect ten days after March 31, 1903. But manifestly the view of both Houses was that the stipulation in the treaty as to the date on which rati-

fications should be exchanged had been superseded by the amendment requiring the approval of Congress before the treaty should take effect; and, not having been advised of the exchange of ratifications, they naturally supposed that that action, which is usually the final step in the making of a treaty, had been deferred until Congress should act.

It will be observed that appellee itself was not advised at the time of its protest, October 20, 1903, as to the exchange of ratifications on March 31, 1903. It said in its protest (R., 6) that ratifications of the treaty had been exchanged, "as provided therein," "on or before the *31st day of January, 1903*, to go into effect on the tenth day after said exchange of ratifications." Clearly it knew nothing of the supplemental treaty extending the time for exchanging ratifications and the actual exchange made in pursuance thereof on March 31, 1903.

The only other explanation of the reference in the act to the exchange of ratifications is that it was a mere inadvertence. That Congress did not intend the act to be retroactive appears very clearly from the history of this legislation.

November 12, 1903, Mr. Payne introduced a bill (H. R. 1921) "to carry into effect a convention between the United States and the Republic of Cuba, signed December 11, 1902," which was referred to the Committee on Ways and Means. (37 Cong. Rec., 223.) The bill was reported without amendment by that committee November 13, 1903 (id, 234), and was

passed by the House without amendment November 19, 1903 (id., 389). The three reports which accompanied the bill when reported to the House are set out in the Appendix.

The committee reports and the debates in the House (37 Cong. Rec., 259, 260, 273, 293, 323, 361) show that it was assumed by everybody that the proposed act would operate prospectively. The idea that the bill would have a retrospective operation never seemed to cross the mind of anyone. The debate was confined to the questions raised as to the authority of the treaty-making power to make treaties affecting the tariff and the advisability of making the reductions proposed by the treaty.

The bill as passed by the House was laid before the Senate November 20, 1903, and referred to the Committee on Foreign Relations. (37 Cong. Rec., 396, 399.) It was reported back without amendment November 23, 1903 (id., 417; S. Rep. 2, 58th Cong., 1st sess., set out in Appendix), made special order the same day (id., 433), and called up from time to time during the remainder of the special session (id., 479, 489, 508, 531), but went over as unfinished business with practically no debate.

The second session of the Fifty-eighth Congress convened December 7, 1903, and on that day, in pursuance of the special order adopted at the previous session, the Senate resumed consideration of the bill. (38 Cong. Rec., 11, 13.) Mr. Cullom, chairman of the Committee on Foreign Relations, who had charge of

the bill, in calling the matter to the attention of the Senate, said (id., 13):

> The bill to carry into effect the reciprocity treaty between the United States and Cuba, having passed the House, has been favorably reported from the Committee on Foreign Relations and is now before the Senate for consideration.
>
> This bill in terms authorizes the President, after receiving evidence that Cuba has made provision to give full effect to the reciprocity treaty between the two countries, to issue his proclamation declaring that he has received such evidence, and *thereafter* the products of Cuba now admitted free of duty by the United States shall continue to be so admitted, and all other products of the Republic of Cuba shall during the life of said convention be admitted at a reduction of 20 per cent.
>
> That is the real substance of the bill, although it undertakes to recite all the provisions of the treaty in which the United States, on its part, makes concessions to the Republic of Cuba.

Debate thereon was continued until December 16, 1903 (38 Cong. Rec., 13, 33, 37, 65, 93, 116, 153, 178, 239, 277), when, in accordance with the special order, a vote was taken, and the bill was passed without amendment (id., 286). On the 17th it was approved by the President.

It thus appears that the bill passed both Houses exactly as introduced.

As in the House, so in the Senate, the debates show that the proposed act was intended to operate prospectively. The explicit declaration of Mr. Cullom on this point above quoted clearly voiced the sentiment of the entire body. There was no debate or dispute about it. It was assumed as a matter of course. The only discussion, aside from the debate as to whether the bill should have been referred to the Committee on Foreign Relations or the Committee on Finance, was as to the scope of the treaty-making power and the constitutional rights of Congress in matters of commerce and revenue, and the propriety of making a reduction in the Cuban tariff at that time.

While the bill was under discussion the fact was adverted to that the proposed act would make a reduction of about eight millions a year in duties upon importations from Cuba. This would have meant, if the act was to operate retrospectively and go into effect nine months previous, that a refund of about six millions would have to be made. Yet not a word was said nor any provision made in that respect. It is impossible under these circumstances to believe that Congress had any such intention.

The propriety of referring to the history of this legislation in order to ascertain the intention of Congress is affirmed by numerous authorities.

> *United States* v. *Union Pacific R. R. Co.*, 91 U. S., 72, 79.
>
> *Platt* v. *Union Pacific R. R. Co.*, 99 U.S., 48, 64.
>
> *American Net and Twine Company* v. *Worthington*, 141 U. S., 468, 474.

Church of the Holy Trinity v. *United States*, 143 U. S., 457, 463.
United States v. *Burr*, 159 U. S., 78, 85.
United States v. *Laws*, 163 U. S., 258, 262.
Dunlap v. *United States*, 173 U. S., 65, 75.

In *Platt* v. *Union Pacific Railroad* (*supra*) the court said:

> In endeavoring to ascertain what the Congress of 1862 intended, we must, as far as possible, place ourselves in the light that Congress enjoyed, look at things as they appeared to it, and discover its purpose from the language used in connection with the attending circumstances.

In *Franklin Sugar Refining Co.* v. *United States*, now before this court on appeal, the Circuit Court for the Eastern District of Pennsylvania held that the treaty in question did not go into effect until approved by Congress in the act of December 17, 1903, and could not be construed to have a retrospective operation.

The Treaty and Act took effect simultaneously on the tenth day after the proclamation of the President.

By its terms the treaty was not to take effect until approved by Congress. Congress gave its approval in the form of an act specifically regulating importations from Cuba in accordance with the terms of the treaty. It was a conditional approval, however. The President was first to ascertain whether Cuba had made provision to give full effect to the convention, issue his

proclamation declaring that he had received such evidence, and "thereupon on the tenth day after exchange of ratifications of such convention" the new arrangement was to begin.

The President, being aware of the fact of which Congress was apparently ignorant—that ratifications had been exchanged—nevertheless had to construe the law so as to carry into effect the substantial purpose of Congress. Notwithstanding its mistake as to the exchange of ratifications, it was clear Congress intended, not only that the new arrangement should not begin to operate until Cuba had made provision to carry out her part of the contract, but that ten days' notice should be given before it should take effect, as originally provided in the treaty. The President, therefore, did the only logical thing under the circumstances—having ascertained that Cuba had made the necessary provision, he declared in his proclamation that "in [substantial] conformity with the said act of Congress" the treaty should take effect on the tenth day therefrom.

It was clearly within the constitutional authority of Congress to make the operation of the act dependent upon the ascertainment and proclamation by the President of the fact that Cuba had made provision to carry into effect the treaty. (*Field* v. *Clark*, 143 U. S., 649.)

Even if the approval of Congress and the action of the President were not strictly in accordance with the terms of the treaty, no one but Cuba could take exception thereto. The interpretation and enforcement of treaty stipulations of this character are matters for the

determination of the political departments of the Government, and the courts must respect their decision.

Foster v. *Neilson*, 2 Pet., 253, 309.
The Cherokee Tobacco, 11 Wall., 616, 621.
Taylor v. *Morton*, 2 Curtis, 454; 2 Black, 481.
Head Money Cases, 112 U. S., 580, 598.
Whitney v. *Robertson*, 124 U. S., 190, 195.
Botiller v. *Dominguez*, 130 U. S., 238, 247.
The Chinese Exclusion Case, 130 U. S., 581, 600, 602.
Fong Yue Ting v. *United States*, 149 U. S., 698, 721.

Cuba, however, has concurred in the action of this Government. On the 17th day of December the President of Cuba also issued his proclamation, stating that Congress had approved the treaty in accordance with requirement of Article XI, and declaring that the treaty should take effect in Cuba on the day named in the proclamation of the President of the United States—December 27, 1903. A copy of said proclamation, as published in the Official Gazette of the Republic of Cuba of December 18, 1903 (omitting the text of the treaty), is set out in the Appendix, together with copies of the correspondence between the Acting Secretary of State and the Minister from Cuba relative to the action taken by Cuba to put the treaty into effect.

If, therefore, the act of Congress of December 17, 1903, be held to operate retrospectively, the intention of Congress to have it operate coterminously with the treaty will be defeated and the reciprocal arrangement

impaired. The reduction provided for by the act upon importations into the United States from Cuba was made in consideration of the reductions guaranteed by the treaty upon importations into Cuba from the United States, and was to continue only so long as the treaty was in force. Congress certainly can not be held to have authorized a gratuitous reduction of duty for the preceding eight months, which must be done in order to sustain appellee's contention. The absurdity of its reading of the act would seem to be demonstrated. To effectuate the intention of Congress, the act must be held to have commenced to operate on the day the treaty took effect in the two countries—December 27, 1903.

United States v. Burr, 159 U. S., 78, controlling.

In the Burr case the tariff act of 1894 specifically required its retrospective application. Although it did not become a law until August 28, 1894, it provided in terms that it should take effect on August 1, 1894. Yet the court disregarded the letter of the statute for its spirit, ascertaining the intention of Congress from the history of the act and all the circumstances of the case.

In that case (pp. 82–83) the general rule was conceded to be, as stated in *United States* v. *Heth* (3 Cranch, 398, 413), that—

> words in a statute ought not to have a retrospective application unless they are so clear,

> strong, and imperative that no other meaning can be annexed to them, or unless the intention of the legislature can not be otherwise satisfied.

It was also conceded (p. 83)—

> that the usual course in tariff legislation has been, inasmuch as some time is necessary to enable importers and business men to act understandingly, to fix a future date at which the statutes are to become operative.

The court said the question was not one of construction but of intention, and in view of the unfortunate consequences which would flow from a literal application of the statute, held that it should not be so applied. Among other things, the court said (p. 85):

> Again, a higher rate of duty was imposed on many articles by the act of 1894 than under the prior act, and a lower rate of duty on others, while some that were free were made dutiable, as, for instance, the article of sugar. *Must duties paid between August 1 and August 28 be refunded where the rate was lowered and assessed where the rate was raised, or a duty imposed where none existed? Clearly not.*
>
> These considerations lead to the conclusion that the act ought not to be construed to operate retrospectively contrary to the general rule, and so as to turn what was intended to secure a period of time to enable business men to act understandingly under the new law into a source of confusion and mischief to the contrary.

These observations apply with equal force to the present case. If the act is to be construed so as to

make it operate retrospectively, then, it would seem, 20 per cent of the duties collected upon importations from Cuba during the preceding eight months ought to be refunded. But no provision has been made by Congress to accomplish that object, and, as no money can be drawn out of the Treasury but in consequence of appropriations made by law (Const. Art. I, sec. 9), the only persons who would benefit by a retrospective construction would be those who, like this importer, took a chance on the inchoate treaty and made a protest, assuming that such a protest is valid.

This case is even stronger than the Burr case. The present statute does not, as did the act of 1894, show on its face a retrospective intention. It can be said to be retrospective only by inference based upon the assumption that Congress was aware of the fact that ratifications had been exchanged, and at the cost of consistency with its direction as to the proclamation of the President. If Congress knew that ratifications had been exchanged several months previous, why say that the treaty should take effect on the *tenth* day after such exchange? It was evidently anticipating something yet to occur, and, as observed in the Burr case, intended to give adequate notice of the proposed change in order that business men, as well as the officers of the Government, might act understandingly under the new law, and not change it into "a source of confusion and mischief to the contrary."

The provision in the treaty requiring the approval of Congress was valid and operative.

It will be observed that the original ground of protest in this case was that the clause in the treaty stipulating that it should not take effect until approved by Congress was inoperative. (Rec., 6.) Since the passage of the act to carry into effect the treaty, however, the appellee apparently contends that the language of the act is all controlling. The correct view necessarily is that as the act was passed to carry into effect the treaty, the language of the act is to be construed in the light of the provisions of the treaty.

The approval of Congress was of course not necessary to the *validity* of the treaty, but by the terms of the treaty such approval was necessary to its *taking effect.*

If, as this court has held, Congress may make the operation of a law depend upon the happening of a certain event (*Field* v. *Clark*, 143 U. S., 649), by a parity of reasoning the treaty-making power may make the operation of a treaty depend upon a like contingency.

Furthermore, this court has recognized the fact that while some treaties are self-executing, others may require legislation by Congress to make them effective.

Foster v. *Neilson*, 2 Pet., 253.
United States v *Arredondo*, 6 Pet., 691.

It is unnecessary to determine to which class the treaty in question essentially belongs, since it in terms stipulates that it shall not take effect until approved by the Congress, and in voicing its approval Congress has enacted the legislation necessary to carry it into execution.

If the stipulation that the treaty should not take effect until approved by Congress was invalid, the treaty never became operative, unless it is to be held that it went into effect contrary to the intention of the parties. And if the treaty never became operative, neither did the act, as the act was intended to stand or fall with the treaty, and expressly provided that the rates of duty fixed thereby should continue in force only "so long as the said convention shall remain in force."

The Protest was invalid.

It is settled that treaties which require legislation to carry them into effect remain inoperative until such legislation has been enacted, and that the officers of the Government must continue to follow the existing law, even if inconsistent with the stipulations of such a treaty, until Congress shall have made provision for its enforcement. (2 Butler on Treaty-making Power, secs. 363, 366, et seq. and cases cited.)

The duties in question were therefore properly collected, and no valid protest could be made. Nor should the subsequent act of Congress, even if construed to be

retroactive, be held to validate the protest. As a practical matter, it was impossible for Congress to put the act into effect during the months that had elapsed, except by providing for a refund of duties paid. It would be unjust to those who paid duties without protest under the law then in force, and who can not now recover them back, to hold that one who made a protest not warranted by the existing law may do so.

The judgment of the Circuit Court should be reversed.

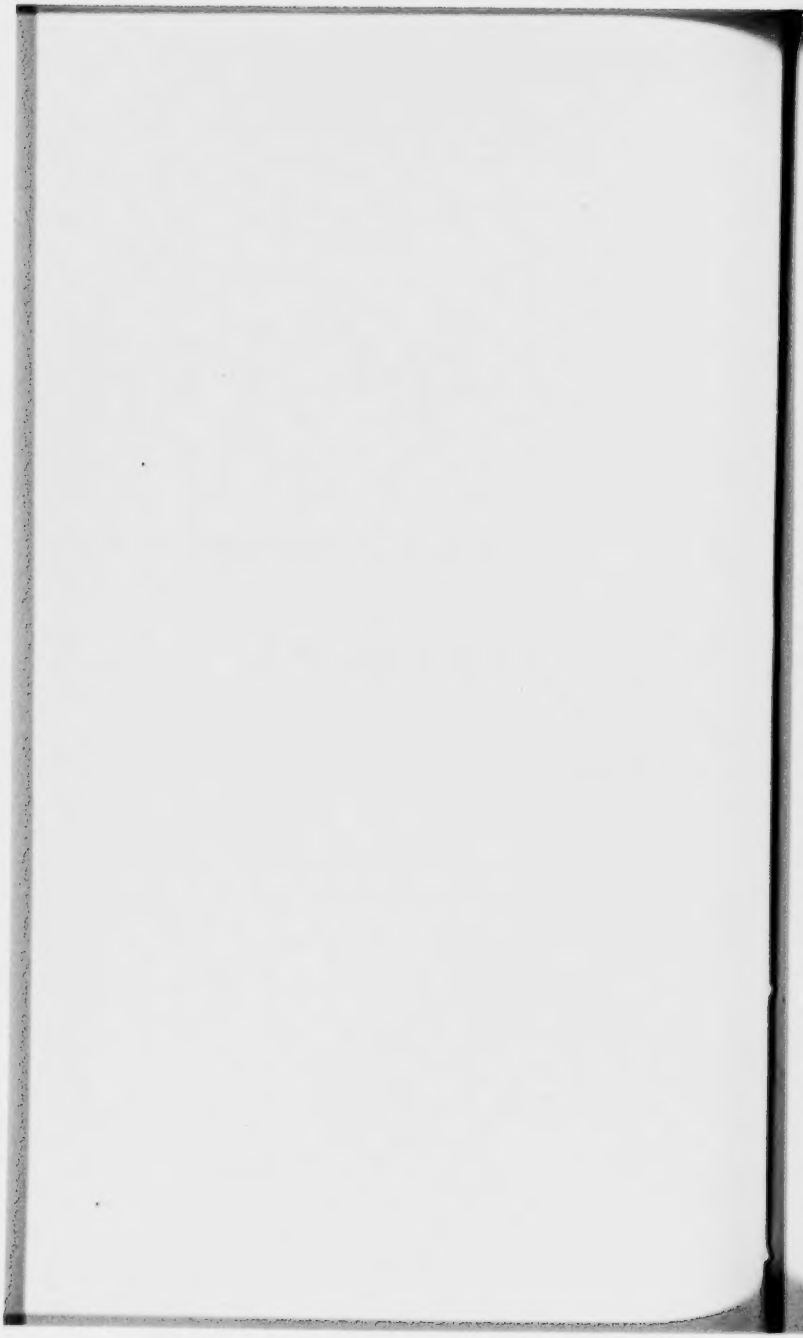
Respectfully submitted.

WILLIAM H. MOODY,
Attorney-General.

HENRY M. HOYT,
Solicitor-General.

WILLIAM R. HARR,
Special Assistant to the Attorney-General.

APPENDIX.



58TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { DOCUMENT No. 2.

RECIPROCAL COMMERCIAL CONVENTION BETWEEN THE UNITED STATES AND CUBA.

MESSAGE

FROM THE

PRESIDENT OF THE UNITED STATES,

TRANSMITTING

THE TEXT OF RECIPROCAL COMMERCIAL CONVENTION BETWEEN THE UNITED STATES AND CUBA, SIGNED DECEMBER 11, 1902.

NOVEMBER 10, 1903.—Referred to the Committee on Ways and Means and ordered to be printed.

To the Senate and House of Representatives:

It being required by the resolution of the Senate of March 19, 1903, that the approval of Congress shall be given to the Reciprocal Commercial Convention between the United States and Cuba, signed December 11, 1902, before the same shall take effect, I transmit herewith the text of the said Convention as amended by the Senate.

THEODORE ROOSEVELT.

WHITE HOUSE, *November 10, 1903.*

The President of the United States of America and the President of the Republic of Cuba, animated by the desire to strengthen the bonds of friendship between the two countries, and to facilitate their commercial intercourse by improving the conditions of trade between them, have resolved to enter into a convention for that purpose, and have appointed their respective Plenipotentiaries, to-wit:

The President of the United States of America, the Honorable General Tasker H. Bliss;

The President of the Republic of Cuba, the Honorable Carlos de Zaldo y Beurmann, Secretary of State and Justice, and the Honorable José M. Garcia y Montes, Secretary of the Treasury;

who, after an exchange of their full powers found to be in good and due form, have, in consideration of and in compensation for the respective concessions and engagements made by each to the other as

hereinafter recited, agreed and do hereby agree upon the following Articles for the regulation and government of their reciprocal trade, namely:

ARTICLE I.

During the term of this convention, all articles of merchandise being the product of the soil or industry of the United States which are now imported into the Republic of Cuba free of duty, and all articles of merchandise being the product of the soil or industry of the Republic of Cuba which are now imported into the United States free of duty, shall continue to be so admitted by the respective countries free of duty.

ARTICLE II.

During the term of this convention, all articles of merchandise not included in the foregoing Article I and being the product of the soil or industry of the Republic of Cuba imported into the United States shall be admitted at a reduction of twenty percentum of the rates of duty thereon as provided by the Tariff Act of the United States approved July 24, 1897, or as may be provided by any tariff law of the United States subsequently enacted.

ARTICLE III.

During the term of this convention, all articles of merchandise not included in the foregoing Article I and not hereinafter enumerated, being the product of the soil or industry of the United States, imported into the Republic of Cuba shall be admitted at a reduction of twenty per centum of the rates of duty thereon as now provided or as may hereafter be provided in the Customs Tariff of said Republic of Cuba.

ARTICLE IV.

During the term of this convention, the following articles of merchandise as enumerated and described in the existing Customs Tariff of the Republic of Cuba, being the product of the soil or industry of the United States imported into Cuba shall be admitted at the following respective reductions of the rates of duty thereon as now provided or as may hereafter be provided in the Customs Tariff of the Republic of Cuba:

Schedule A.

To be admitted at a reduction of twenty-five (25) per centum:

Machinery and apparatus of copper or its alloys or machines and apparatus in which copper or its alloys enter as the component of chief value; cast iron, wrought iron and steel, and manufactures thereof; articles of crystal and glass, except window glass; ships and water borne vessels of all kinds, of iron or steel; whiskies and brandies; fish, salted, pickled, smoke or marinated; fish or shellfish, preserved in oil or otherwise in tins; articles of pottery or earthenware now classified under Paragraphs 21 and 22 of the Customs Tariff of the Republic of Cuba.

Schedule B.

To be admitted at a reduction of thirty (30) percentum:

Butter; flour of wheat; corn; flour of corn or corn meal; chemical and pharmaceutical products and simple drugs; malt liquors in bottles; non-alcoholic beverages; cider; mineral waters; colors and dyes; window glass; complete or partly made up articles of hemp, flax, pita, jute, henequen, ramie, and other vegetable fibers now classified under the paragraphs of Group 2, Class V, of the Customs Tariff of the Republic of Cuba; musical instruments; writing and printing paper, except for newspapers; cotton and manufactures thereof, except knitted goods (see Schedule C); all articles of cutlery; boots, shoes and slippers, now classified under Paragraphs 197 and 198 of the Customs Tariff of the Republic of Cuba; gold and silver plated ware; drawings, photographs, engravings, lithographs, cromolithographs, oleographs, etc., printed from stone, zinc, aluminium, or other material, used as labels, flaps, bands and wrappers for tobacco or other purposes, and all the other papers (except paper for cigarettes, and excepting maps and charts), pasteboard and manufactures thereof, now classified under Paragraphs 157 to 164 inclusive of the Customs Tariff of the Republic of Cuba; common or ordinary soaps, now classified under Paragraph 105, letters "A" and "B", of the Customs Tariff of the Republic of Cuba; vegetables, pickled or preserved in any manner; all wines, except those now classified under Paragraph 279 (a) of the Customs Tariff of the Republic of Cuba.

Schedule C.

To be admitted at a reduction of forty (40) per centum:

Manufactures of cotton, knitted, and all manufactures of cotton not included in the preceding schedules; cheese; fruits, preserved; paper pulp; perfumery and essences; articles of pottery and earthenware now classified under Paragraph 20 of the Customs Tariff of the Republic of Cuba; porcelain; soaps, other than common, now classified under Paragraph 105 of the Customs Tariff of the Republic of Cuba; umbrellas and parasols; dextrine and glucose; watches; wool and manufactures thereof; silk and manufactures thereof; rice; cattle.

ARTICLE V.

It is understood and agreed that the laws and regulations adopted, or that may be adopted, by the United States and by the Republic of Cuba, to protect their revenues and prevent fraud in the declarations and proofs that the articles of merchandise to which this convention may apply are the product or manufacture of the United States and the Republic of Cuba, respectively, shall not impose any additional charge or fees therefor on the articles imported, excepting the consular fees established, or which may be established, by either of the two countries for issuing shipping documents, which fees shall not be higher than those charged on the shipments of similar merchandise from any other nation whatsoever.

ARTICLE VI.

It is agreed that the tobacco, in any form, of the United States or of any of its insular possessions, shall not enjoy the benefit of any concession or rebate of duty when imported into the Republic of Cuba.

ARTICLE VII.

It is agreed that similar articles of both countries shall receive equal treatment on their importation into the ports of the United States and of the Republic of Cuba, respectively.

ARTICLE VIII.

The rates of duty herein granted by the United States to the Republic of Cuba are and shall continue during the term of this convention preferential in respect to all like imports from other countries, and, in return for said preferential rates of duty granted to the Republic of Cuba by the United States, it is agreed that the concession herein granted on the part of the said Republic of Cuba to the products of the United States shall likewise be, and shall continue, during the term of this convention, preferential in respect to all like imports from other countries: Provided, That while this convention is in force, no sugar imported from the Republic of Cuba, and being the product of the soil or industry of the Republic of Cuba, shall be admitted into the United States at a reduction of duty greater than twenty per centum of the rates of duty thereon as provided by the tariff act of the United States approved July 24, 1897, and no sugar, the product of any other foreign country, shall be admitted by treaty or convention into the United States, while this convention is in force, at a lower rate of duty than that provided by the tariff act of the United States approved July 24, 1897.

ARTICLE IX.

In order to maintain the mutual advantages granted in the present convention by the United States to the Republic of Cuba and by the Republic of Cuba to the United States, it is understood and agreed that any tax or charge that may be imposed by the national or local authorities of either of the two countries upon the articles of merchandise embraced in the provisions of this convention, subsequent to importation and prior to their entering into consumption in the respective countries, shall be imposed and collected without discrimination upon like articles whencesoever imported.

ARTICLE X.

It is hereby understood and agreed that in case of changes in the tariff of either country which deprive the other of the advantage which is represented by the percentages herein agreed upon, on the actual rates of the tariffs now in force, the country so deprived of this protection reserves the right to terminate its obligations under this convention after six months' notice to the other of its intention to arrest the operations thereof.

And it is further understood and agreed that if, at any time during the term of this convention, after the expiration of the first year, the protection herein granted to the products and manufactures of the United States on the basis of the actual rates of the tariff of the Republic of Cuba now in force, should appear to the government of the said Republic to be excessive in view of a new tariff law that may be adopted by it after this convention becomes operative, then the said Republic of Cuba may reopen negotiations with a view to securing such modifications as may appear proper to both contracting parties.

ARTICLE XI.

The present convention shall be ratified by the appropriate authorities of the respective countries, and the ratifications shall be exchanged at Washington, District of Columbia, United States of America, as soon as may be before the thirty-first day of January, 1903, and the convention shall go into effect on the tenth day after the exchange of ratifications, and shall continue in force for the term of five (5) years from date of going into effect, and from year to year thereafter until the expiration of one year from the day when either of the contracting parties shall give notice to the other of its intention to terminate the same.

This convention shall not take effect until the same shall have been approved by the Congress.

In witness whereof we, the respective Plenipotentiaries, have signed the same in duplicate, in English and Spanish, and have affixed our respective seals, at Havana, Cuba, this eleventh day of December, in the year one thousand nine hundred and two.

TASKER H. BLISS. [SEAL.]
CARLOS DE ZALDO. [SEAL.]
JOSÉ M. GARCIA MONTES. [SEAL.]

24213—06——3

58TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 1.

RECIPROCITY WITH CUBA.

NOVEMBER 13, 1903.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

Mr. PAYNE, from the Committee on Ways and Means, submitted the following

REPORT.

[To accompany H. R. 1921.]

The Committee on Ways and Means, to whom was referred the bill (H. R. 1921) to carry into effect a convention between the United States and the Republic of Cuba, signed on the 11th day of December, in the year 1902, having had the same under consideration, report the same back with a recommendation that the bill pass.

The enactment of this bill into law is necessary to give effect to the convention providing for reciprocal trade between this country and Cuba. This results not merely because the convention itself provides that it "shall not take effect until the same shall have been approved by the Congress," but because the Constitution gives no power to the President and the Senate to make a convention or treaty changing the rates of revenue. That power is expressly lodged in the Congress (sec. 8, Article I of the Constitution). Section 7 of the same article provides that "all bills for raising revenue shall originate in the House of Representatives." It is not intended here to cite authorities or advance reasons on this proposition. The records of Congress abound with unrefuted arguments on the affirmative of this contention, and the practice of Congress has been uniformly in the same direction. The reciprocity treaties with Great Britian in reference to our trade relations with Canada and with Hawaii were, by their terms, each dependent upon the passage by the Congress of appropriate legislation reducing the duties and making provision for the carrying into effect of their terms. Every treaty requiring the payment of money, from the Jay treaty to the treaty of Paris with Spain, has been referred to the Congress to make the necessary appropriation of money. Foreign countries in making treaties with us are bound to take notice of this requirement of our Constitution, and, whether it is expressed in the treaty or not, the whole matter is subject to the necessary legislation by the Congress.

The convention to which this bill refers is by its terms not to "take effect until the same shall have been approved by the Congress." If, in the judgment of Congress, the terms of the treaty are to become the law of the land it is necessary, both by the terms of the convention and by force of the express requirement of the Constitution, that Congress pass the requisite legislation authorizing the change in our revenue laws.

To render the convention valid it is necessary to enact into law the language of the proviso of Article VIII, "and no sugar, the product of any other foreign country, shall be admitted by treaty or convention into the United States while this convention is in force at a lower rate of duty than that provided by the tariff act of the United States approved July 24, 1897." To enact these words into law would be to admit, by implication, that duties could be lowered by treaty or convention. Your committee can not consent to this proposition, nor is it believed that such an admission would be sanctioned by any member of the House. The bill, therefore, adds the following saving clause at the conclusion of this proviso:

And provided further, That nothing herein contained shall be held or construed as an admission on the part of the House of Representatives that customs duties can be changed otherwise than by an act of Congress originating in said House.

This proviso, in the judgment of your committee, preserves the contention of the House as to its rights and prerogatives under the Constitution.

Legislation upon this subject was very properly initiated in the House at the first session of the Fifty-seventh Congress. A bill was introduced early in the session "to provide for reciprocal trade relations with Cuba." That bill authorized the President to make a commercial agreement with Cuba, in most of its essentials identical with this convention now proposed. That bill was reported by this committee March 31, 1902, and finally passed the House with amendments April 19, 1902. The bill failed in the Senate, but the Executive took up the negotiations which have resulted in this convention, which was ratified by the Senate in March last.

This subject was first brought to the attention of Congress by the President in his message at the beginning of the first session of the Fifty-seventh Congress. He said:

Elsewhere I have discussed the question of reciprocity. In the case of Cuba, however, there are weighty reasons of morality and of national interest why the policy should be held to have a peculiar application, and I most earnestly ask your attention to the wisdom—indeed, to the vital need—of providing for a substantial reduction in the tariff duties on Cuban imports into the United States. Cuba has in her constitution affirmed what we desired—that she should stand, in international matters, in closer and more friendly relations with us than with any other power; and we are bound by every consideration of honor and expediency to pass commercial measures in the interest of her material well-being.

These words were reenforced by the Secretary of War in his report, as follows:

Aside from the moral obligation to which we committed ourselves when we drove Spain out of Cuba, and aside from the ordinary considerations of commercial advantage involved in a reciprocity treaty, there are the weightiest reasons of American public policy pointing in the same direction; for the peace of Cuba is necessary to the peace of the United States; the health of Cuba is necessary to the health of the United States; the independence of Cuba is necessary to the safety of the United States. The same considerations which led to the war with Spain now require that a commercial arrangement be made under which Cuba can live. The condition of

the sugar and tobacco industries in Cuba is already such that the earliest possible action by Congress upon this subject is desirable.

The President has deemed the subject of sufficient importance to convene an extraordinary session of Congress in order that the convention may become effective before the commencement of the harvest of the new sugar crop in December. In his message to the present Congress he forcibly states his reasons for the passage of this legislation:

> The treaty submitted to you for approval secures to the United States economic advantages as great as those given to Cuba. Not an American interest is sacrificed. By the treaty a large Cuban market is secured to our producers. It is a market which lies at our doors, which is already large, which is capable of great expansion, and which is especially important to the development of our export trade. It would be indeed shortsighted for us to refuse to take advantage of such an opportunity, and to force Cuba into making arrangements with other countries to our disadvantage.
>
> This reciprocity treaty stands by itself. It is demanded on considerations of broad national policy as well as by our economic interest. It will do harm to no industry. It will benefit many industries. It is in the interest of our people as a whole, both because of its importance from the broad standpoint of international policy and because economically it intimately concerns us to develop and secure the rich Cuban market for our farmers, artisans, merchants, and manufacturers. Finally, it is desirable as a guaranty of the good faith of our nation toward her young sister Republic to the south, whose welfare must ever be closely bound with ours. We gave her liberty. We are knit to her by the memories of the blood and the courage of our soldiers who fought for her in war; by the memories of the wisdom and integrity of our administrators who served her in peace and who started her so well on the difficult path of self-government. We must help her onward and upward; and in helping her we shall help ourselves.
>
> The foregoing considerations caused the negotiation of the treaty with Cuba and its ratification by the Senate. They now with equal force support the legislation by the Congress which by the terms of the treaty is necessary to render it operative. A failure to enact such legislation would come perilously near a repudiation of the pledged faith of the nation.

This legislation will result in no harm to any American industry. Articles the product of this country like the articles embraced in this convention now imported from Cuba receive the very highest protection of any in the same schedule. The duty on sugar was placed above the protective point for the purpose of revenue. The House tariff bill provided expressly for a reduction in the interests of reciprocal trade agreement, which it authorized the President to make. The duty on tobacco has for years been much higher than any necessity required on account of the competition of Cuban tobacco. The reduction in this bill leaves it amply protected. The present rate was intended primarily for protection against the Sumatra leaf, 1 pound of which, for wrapper purposes, will go nearly as far as 4 pounds of any other tobacco. The reduction of duty in this bill will injure no American industry.

On the other hand, we can but make great gains in our export trade to Cuba. On account of the depression caused by the low price of sugar, although six or seven thousand men were employed in railroad building and there were large importations of railroad material and equipment during the year, Cuban imports have fallen off from an average of more than $66,000,000 in the preceding three years to about $60,000,000 in 1902. Of these imports we furnished less than 42 per cent; we should furnish at least 80 per cent. Under the preferential tariff rate provided in the convention we ought in a short time to supply practically the Cuban market. We produce everything she needs and buys. We shall have an advantage of from 25 to 40 per cent dis-

count on tariff rates on articles with which we do not now supply her people. This legislation will certainly tend to bring prosperity to Cuba and our imports must increase and our market broaden. Our trade will advance from year to year, as it did under the former period of reciprocal agreement (1891–1894) inaugurated under the McKinley Act. This legislation will bring rich results both to Cuba and to the United States, and will fittingly complete one of the proudest chapters in our history, which chronicles the sacrifices of a great nation for an oppressed and distressed people at our very door.

58TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT 1, Part 2.

RECIPROCITY WITH CUBA.

NOVEMBER 16, 1903.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

Mr. WILLIAMS, of Mississippi, from the Committee on Ways and Means, submitted the following as the

VIEWS OF THE MINORITY.

[To accompany H. R. 1921.]

We, minority members of the Committee on Ways and Means, make the following report of our views concerning H. R. 1921, being a bill entitled "A bill to carry into effect a convention between the United States and the Republic of Cuba, signed on the eleventh day of December, in the year nineteen hundred and two," introduced in the House of Representatives on the 12th day of November, 1903, by Mr. Payne, of New York, and referred to the Committee on Ways and Means:

We believe that the bill as reported by the Committee on Ways and Means to the House ought to have been amended in committee before being reported and ought now to be amended in the House before its passage, as follows:

By striking from the bill the following language, beginning in line 15, page 2, and ending in line 2, page 3:

Provided, That while said convention is in force no sugar imported from the Republic of Cuba, and being the product of the soil or industry of the Republic of Cuba, shall be admitted into the United States at a reduction of duty greater than twenty per centum of the rates of duty thereon, as provided by the tariff act of the United States, approved July twenty-fourth, eighteen hundred and ninety-seven, and no sugar, the product of any other foreign country, shall be admitted by treaty or convention into the United States, while this convention is in force, at a lower rate of duty than that provided by the tariff act of the United States approved July twenty-fourth, eighteen hundred and ninety-seven:

and by inserting the following in lieu thereof:

That upon the making of said agreement and the issuance of said proclamation and while said agreement shall remain in force there shall be levied, collected, and paid, in lieu of the duties thereon now provided by law on all sugars above No. 16 Dutch standard in color and all sugar which has gone through a process of refining imported into the United States, one cent and eight hundred and twenty-five one-thousandths of one cent per pound.

Our objection to the language proposed to be stricken out is twofold:

First, as a general principle, one Congress has no right to attempt to bind a succeeding Congress, as is attempted in this bill in the case of sugars imported from Cuba, nor to attempt to bind the treaty-making power of the United States in a succeeding Congress or under a succeeding administration, as is attempted in the bill in the case of sugars imported from other foreign countries. We do not believe that the language proposed to be stricken out is, or could be made, of binding force and effect, even if enacted into law. It is, ostensibly, at any rate, a waiver, to some extent, of the general right of abrogation and establishes a precedent of evil import.

In the second place, we are not willing to bind ourselves nor silently to acquiesce in an attempt—although legally and morally ineffectual to bind us—to continue in existence, at a given fixed rate, a duty upon any product imported into the United States for any definite period, whether the article be sugar or anything else, or whether it be the product of the island of Cuba, or of any other country, or of all other countries.

Public needs and interests may at any moment suggest or require a different treatment of tariff schedules. A schedule is not a fetich to be worshiped. We hope, therefore, the House will strike out the provision.

We think, in the next place, that there ought to be inserted in lieu of the provision proposed to be stricken out, or elsewhere in the bill, the language proposed to be inserted by the amendment above referred to, because, in our opinion, we would thereby deprive the great sugar trust of this country of some of its power to extort from the consumer, curtail its power to bear down the price of the raw material, thereby injuring the sugar planter, and lessen its ability to dictate to wholesale and retail dealers in sugar the manner in which they shall do business and the price at which they shall sell refined sugar.

The House during the Fifty-seventh Congress took this view and passed an amendment identically worded as now proposed by us. The House took that view after a full investigation and a comparatively full discussion of the question, and the very treaty proposed to be put in force by this bill (H. R. 1921) would have been in force now had all those charged with the duty of legislation in other branches of the Government been willing to see the burden upon the American consumer of sugars and other products imported from Cuba into the United States lightened, or had they been willing to see the Cuban market for American products enlarged, even though at some expense to the great sugar trust of the United States. The only injury to the trust itself even would have been to lessen to a small degree its power to extort from the consumer and to tyrannize over producers and commerce.

If the amendment we propose to offer shall be adopted we shall gladly vote for the bill, believing that it will at one and the same time diminish to a certain extent the trust evil, furnish a better and wider and further market for American agricultural and manufactured products in Cuba, and benefit the American consumer of Cuban products. These are three consummations devoutly to be wished.

If the amendment shall not be adopted we still recommend the passage of the bill despite its bad features, because we think that the good

to be done by its passage will far overbalance the evil which will result from a failure to take advantage of the opportunity to diminish the power of the sugar trust and the evil resulting from the bad precedent proposing, in effectually it is true, to prevent the country from still further reducing the duties upon Cuban sugars and upon sugars from other countries whenever it shall appear wise and expedient to do so by reciprocal treaty agreement or statute law.

Believing, as we do, that commerce ought to be as nearly untrammeled as possible, consistently with the needs of a revenue for economical and effective governmental administration, and consistently with a desire not to revolutionize existing conditions by destroying honest, legitimate, and nonmonopolistic enterprises, we find in this bill an affirmance of that principle, a step in the right direction and, furthermore, a recognition of the fact that a decrease of governmental tolls levied upon international commerce constitutes a benefit to the countries between which the commerce is carried on.

Charged with the duty of legislating for the benefit of the American people, as we are, and friends to the new-born Republic of Cuba, desiring her prosperity, we recognize that this bill will, to some extent, relieve the unnecessary burdens upon both Americans and Cubans, enabling the Americans to buy Cuban products at more reasonable prices and enabling the Cubans to buy American products at more reasonable prices, thereby enlarging the volume of trade between the two countries in both directions.

We regret that the party in power has not seen its way to confer still further benefits upon citizens of both nations by providing for even freer and yet more untrammeled and unrestricted commerce between them. As long as the present party is in power we can perhaps hope for tariff reductions and revision only from reciprocity treaties. It is a piecemeal process, but it is better than no process at all. We hail it as a harbinger of future reciprocity treaties with other countries, especially those upon the American Continent, and notably our neighbor to the north, the Dominion of Canada.

Commercial wars are detrimental, sometimes destructive. They are wars in which there can not be a victor on either side—wars as a result of which both sides endure defeat. Friendly relations between peoples can not be as certainly secured in any other way as by the reciprocal benefits of trade and commerce. Men of different nations bound to one another by large and valuable trade relations are bound by the closest tie of a materialistic character known to human nature—the tie of self-interest. They have given a mutual bond to keep the peace, and strenuous "jingoism" itself hesitates, under such circumstances, to disturb it.

We recommend the passage of the amendment referred to above, and failing in that, having filed our protest by voice and vote against the right or power to bind our future conduct, we still recommend the passage of the bill.

JOHN S. WILLIAMS.
CLAUDE A. SWANSON.
GEO. B. MCCLELLAN.
CHAMP CLARK.

58TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT 1, Part 3.

RECIPROCITY WITH CUBA.

NOVEMBER 16, 1903.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

Mr. COOPER, of Texas, from the Committee on Ways and Means, submitted the following

VIEWS.

[To accompany H. R. 1921.]

VIEWS OF MR. COOPER, OF TEXAS.

Since filing my objections to the bill of the Fifty-seventh Congress (H. R. 12765) providing for commercial reciprocal relations with Cuba, I have carefully considered the subject further, from every point of view, with the result that my objections to the Cuban reciprocity project have become only strengthened and confirmed, and I can not approve or support the bill (H. R. 1921) reported in this extraordinary session of the Fifty-eighth Congress by the majority of the Ways and Means Committee.

In the light of all the facts and arguments pertaining to the subject, so far as I can apprehend and understand them, the bill and the purpose for which it is framed will not prove beneficial to the people of either Cuba or the United States, nor is the measure demanded by any considerations of honor, duty, or even expediency; but on the contrary the bill, in my judgment, will tend, if enacted, to the injury of our own people, if not also the Cubans themselves.

At the outset, grave doubts as to the constitutionality of the bill present themselves. The subject-matter of the pending treaty, or "commercial convention," relates entirely to a question of revenue, and by the Constitution the initiative in all matters touching the revenue is given to the House of Representatives. Waiving the point as to the right of the Senate to exercise the treaty-making power when the treaty under consideration is one solely affecting the revenue, it is now claimed by the supporters of the proposed legislation that the right of the House of Representatives to the initiative in revenue matters is preserved in this case by the introduction of this bill in the House in lieu of similar initiative action in the Senate.

But it appears to me to be plainly a subterfuge to contend that this is a bill of the House, when its only purpose and effect is to ratify a treaty or law already perfected in form by the other branch of Congress, and practically already ratified in that branch, under the treaty-making power conferred by the Constitution, which treaty or law the House is now simply called upon by the majority to accept as a *fait accompli*, without any voice as to the wording of the original document, and even without the privilege of amending or modifying the terms laid down by its constructors. It certainly appears an unconstitutional proceeding thus to tie the hands of the House of Representatives in a matter of legislation affecting the revenue.

Aside from this point, the proposed reciprocity agreement, in my judgment, is open to many and strong objections on political and practical grounds.

The proposed reciprocity is both undemocratic and unrepublican. It is undemocratic in that the democratic theory of taxation is that all taxation should be equal and uniform, and that bounties or subsidies to certain favored individuals or interests are unjust and illegal. Reciprocity, in its very nature, is an indirect bounty or subsidy. In the case at issue the beneficiaries of the subsidy would be sugar-refining interests and some other special interests affected by the proposed tariff rebates, and the amount of benefit reaped by them would have to be made up for by taxation of the whole people upon some other articles not covered by the treaty.

The proposed reciprocity is unrepublican in that it deliberately seeks to injure and interfere with a home industry by lowering tariff rates which protect that industry, and thus directly inviting and stimulating a rival foreign industry. It is republican only in so far as it is preferential and discriminating. It is a long step toward a free-trade South and a protected East and North, in that it trades off agricultural tariffs to secure foreign markets for the trusts in manufactured goods, an odious doctrine to a Democrat who believes in equal rights to all and special privileges to none; violative of the declaration of the Chicago Democratic platform of 1896, which declared for a tariff for revenue "so levied as not to discriminate against sections."

A reciprocity treaty of the nature of the pending treaty—a preferential compact between two individual nations—violates the fundamental principles of both democracy and republicanism. It violates both the tariff-for-revenue principle and the tariff-for-protection principle. In the present case it violates the protection principle because it proposes to allow the introduction into this country, at reduced tariff rates, of large quantities of sugar and other commodities extensively produced in the United States. It violates the tariff-for-revenue principle because it deliberately lops off about $8,000,000 of our annual revenue without benefit to the consumer, takes this amount out of our Treasury and gives it to certain favored beneficiaries, and compels our taxpayers to make up the deficiency thus arbitrarily created.

The bill, in its practical operation, can not benefit the consumer, the producer, or the Treasury. The increased output of sugar from Cuba will be controlled by the sugar trust, and it has been proved with sufficient conclusiveness that in all probability the benefits of the proposed rebate would be appropriated by the managers of the trust, and that even if a portion thereof should find their way to the producers in Cuba the Cubans themselves would not be benefited because fully 70 per cent of the planters in the island are foreigners—Americans, Spaniards, Germans, etc.

The trust will continue to control not only the output and the producer, but also the price and the consumer. The increase of the inflow of sugar from Cuba will not in the least diminish the price to the American consumer. The price of sugar here depends on the world-price, as fixed at Hamburg. It is not affected at all by the amount of the supply in our home market. The consumer would thus be without benefit in the way of reduced price of sugar, and would be positively injured by being compelled to pay taxes to the amount of about $8,000,000 to make up the revenue diverted by this bill, or treaty,

from the Treasury of the United States into the pockets of the managers of the sugar trust.

One of the strongest objections to the bill lies against the extraordinary supplemental provision prohibiting the House of Representatives from making any further reductions in the duty on sugar during the life of the treaty. In other words, if the House sanctions this instrument, and if the bill becomes a law, the House spontaneously abrogates its constitutional right to initiate alterations in the tariff on sugar, and binds itself not to make any such alterations in that tariff for at least five years to come. I can not but consider such a proposition as this, involving the surrender of the prerogatives and the abandonment of the duties of this branch of the Government, as being wholly unprecedented in its audacity.

I do not find that this country is under any moral obligation, expressed or implied, to enact this measure. There is nothing in the treaty of Paris or in the so-called Platt amendment calling for it. We have already done all, and much more than all, that we were in honor bound to do for the benefit of Cuba. There is nothing in law or in morals justifying the contention that Cuba is a political dependency of the United States, or that the United States is morally bound to insure and guarantee the success of the Cuban Republic. This theory is not only unsound but also humiliating to both countries, and it is very properly resented and repudiated by the leading Cubans themselves.

The plea that this special favor to the Cubans should be granted as an act of charity or benevolence, because the Cubans are in desperate financial straits and on the verge of political collapse and commercial failure, is found on examination to be equally unsound. In fact, the Cubans are now exceedingly prosperous, and their success, both politically and commercially, is assured. This is proved by the most recent official publications of the Cuban authorities and also by numerous publications of our own Government, and also by the testimony of financial and commercial statistics gathered from many independent and impartial sources, not only in this country and Cuba but also in Europe.

The only great trouble confronting the Cubans is the low price of sugar, but this will be only partially met by the passage of this bill, and the only efficacious remedy for this trouble will be found in greater diversification of crops in Cuba, and a turning over of certain portions of the Cuban sugar lands to the production of coffee, fruits, etc., even as these same lands were formerly turned over from coffee to sugar production, when the prices of sugar ran very high.

Cuba's foreign trade has gone up from about $50,000,000 in 1896 and 1897 to about $125,000,000 in 1902, and will, in all probability, amount to at least $150,000,000 in the calendar year 1903. It is increasing of late by leaps and bounds. The exports of Cuban sugar to this country in the fiscal year 1902, were 439,000 tons, and in the fiscal year 1903 they were more than 1,000,000 tons. The value of the tobacco export from Cuba to this country in 1902 was less than $11,000,000, while that of the present year has exceeded $13,000,000. The export of pineapples and other fruits from Cuba has doubled since 1902. The value of Cuban products and exports in the line of mineral ores, lumber, etc., is increasing annually at a rapid rate.

Between 1899 and 1903 Cuba's total exports of sugar and molasses have increased in value from $19,000,000 to over $30,000,000; of

tobacco from $21,000,000 to $25,000,000; of iron ore, asphalt, and other mineral products, from $500,000 to $2,000,000; of fruits and vegetables from $800,000 to $1,900,000, and of all kinds of merchandise from $45,000,000 to $65,000,000 in 1902, with a certainty of a great further advance in 1903.

This expansion of Cuba's foreign trade is not only with this country, but with the European countries. The statistics show that between 1899 and 1902 Cuba's exports to the United Kingdom increased more than 100 per cent, and her exports to Germany more than 150 per cent. Altogether, Cuba seems to be doing very well, and not to be in pressing need of any special benevolences.

Legislation such as is proposed in this bill will assuredly anger and alienate other friendly powers. It is a measure expressly calculated and intended to assist this country and one other country at the expense of all the other countries. If it should prove of material benefit to Cuba and the United States in any respect, in so far it would prove proportionally injurious to the other nations. I can not see how we should gain by courting a little additional trade with Cuba, if we thereby invite retaliation and reprisals by other nations.

There is nothing going to prove that our export trade to Cuba would be materially benefited by the proposed legislation. Our exports to Cuba now are as large, if not larger than they were under the reciprocity of 1891–94. The Cuban tariff is low, and affords no material bar to the purchase by the Cubans of anything they want, in whatever market their tastes are best suited. With or without reciprocity, they will continue buying their shoes from Spain and their textile goods from England, because they fancy those products.

This bill does not require Cuba to enact stringent immigration laws, like those of the United States. As a consequence, cheap labor will naturally gravitate to Cuba and produce sugar there in competition with the high-priced labor of the United States.

In thus presenting some of my principal objections to the pending bill and treaty, I wish to include, in conclusion, the views which I offered in opposition to the previous reciprocity bill (H. R. 12765) on the 5th of April, 1902, as follows:

MINORITY VIEWS.

[To accompany H. R. 12765.]

After giving due attention to the evidence submitted to the Ways and Means Committee in support of and in opposition to legislation proposed by the President and Governor-General Wood for the benefit of Cuba, I am unable to give my support to the bill reported by the majority of the Ways and Means Committee.

In my judgment the bill as reported does not commend itself to the judgment of anyone at interest and will not be effective for any good purpose whatever, while it is open to many serious objections. Had the Ways and Means Committee reported a bill removing the differential in favor of refined sugar, which differential gives the American Sugar Refining Company, commonly called the "sugar trust," a monopoly, enabling it to fix the price of raw sugar to the producer and refined sugar to the consumer, and had the bill proposed to give any relief to the consumer I would gladly have supported the bill accompanied with a proper reduction upon the present tariff upon sugar.

The form in which the bill has been reported has converted a pretended sympathy for Cuba into a measure which will not be of benefit to Cuba, will not relieve the American consumer from taxation or lessen the cost of his consumption, but redound largely to the interest of the "sugar trust" and other "manufacturing trusts" at the expense of American agricultural and horticultural interests. I submit—

First. That the reduction of 20 per cent upon the sugar schedule, as proposed by the bill, will be of no practical benefit to the Cubans, and with this statement Presi-

dent Roosevelt, Governor-General Wood, and other advocates of a reduction in our tariff upon sugar are agreed.

Second. That there is no such distress in Cuba as to demand any change in our tariff laws, and this statement is derived from a fair analysis of all the testimony before the Ways and Means Committee

Third. This Government is under no obligations, by reason of the Platt amendment, to make tariff concessions to Cuba not made to all other countries alike. We have expended $250,000,000 in giving Cuba her liberty, and the conditions imposed upon her do not prevent the making of commercial treaties with any other country. In fact, the total production of sugar in Cuba to-day finds a market in the United States simply because, even under present tariff laws, she receives more for her sugar here than she could elsewhere.

Fourth. No reduction in taxation upon the American consumer will be had should the proposed bill become a law, and it is not contended by any person well informed that the consumer will pay any less here by reason of the proposed reduction. The present differential in favor of refined sugar prohibits the refining of sugar in Cuba, and compels the shipment of her sugar in a raw state to this country where the "sugar trust" is the chief purchaser. It is not believed that the trust will give Cuba the benefit of this reduction. On the contrary, it is more likely, the price of sugar being fixed in Hamburg, that the "sugar trust" will not only pocket this reduction, but will use it as a club to compel the producers of sugar in the United States to sell their raw sugar to the trust at an equivalent reduction without any concession whatever to the consumer.

Fifth. The proposed bill will simply take from the Federal Treasury about $8,000,000 of annual revenue and transfer it to the coffers of the "sugar trust," without relief from excessive taxation to the citizens of the United States or benefit to the consumers of sugar.

Sixth. It inaugurates the policy of reciprocity which, as now advocated by the Republican party, is as undemocratic as a tariff for protection, and which has been aptly called "the handmaiden of protection." The Democratic view has always been that tariffs should be laid fairly and equitably to raise revenue for the support of the Government. It is as much a perversion of the taxing power to use it as a means to dicker and barter with other countries as it is to use it to protect favored industries against foreign competition. Tariffs should be framed for revenue and should be applied to all nations alike, enabling them to trade with us upon terms of equality. Instead of "Peace, amity, and commerce with all nations, entangling alliances with none," we will enter upon a policy provocative of jealousies, dissensions, reprisals, and retaliation by foreign powers toward this country, and in the vortex tariff reform and tariff for revenue will be lost sight of, to be supplanted by unscientific, unfair, and unequal tariff schedules. Reciprocity trade relations will necessarily result in a struggle here upon the part of powerful industries to obtain trade concessions abroad at the expense of other industries which are less powerful at court, and in such a contest the powerful interests will be supreme and the weaker "go to the wall." As tersely stated by a distinguished member of Congress, "Free trade for the farmer, protection for the trusts."

Seventh. The proposed bill is not a revenue measure, not a reduction of taxation, but a bill to give double protection to the great interests which refuse to reduce their exactions upon the American people. The present extravagantly high protective tariff is maintained in favor of all the great trusts in the United States which are now selling abroad for less than they are selling at home, and still shields them from foreign competition here, while Cuba is required to give them a differential of 20 per cent against all other countries to protect them there.

Eighth. The proposed bill will force Cuba to abandon her present revenue tariff and adopt a protective system, and that, too, not for her own benefit, but at the cost of her consumers, to protect American manufacturers against foreign competition in the Cuban market. The present tariff in force in Cuba is purely a revenue measure, and yields barely sufficient for her purposes. If this bill becomes a law, Cuba will be compelled to meet its provisions, not by reducing her tariff upon imports from the United States, but by raising her tariff upon the products of countries other than the United States brought into Cuba, and the Democrat who votes for this bill will vote for a measure which takes millions of dollars out of the Federal Treasury and presents it to the "sugar trust" without a dollar's benefit to the American consumer, and to force Cuba to abandon a tariff for revenue only and adopt a protective tariff system for the benefit of the greedy interests which have fattened upon exactions wrung from our citizens, and whose rapacity now reaches out to oppress the Cubans under the guise of "a measure to relieve distress."

S. B. COOPER.

58TH CONGRESS, 1st Session. | SENATE. | REPORT No. 2.

RECIPROCITY WITH CUBA.

NOVEMBER 23, 1903.—Ordered to be printed.

Mr. CULLOM, from the Committee on Foreign Relations, submitted the following

REPORT.

[To accompany H. R. 1921.]

The Committee on Foreign Relations, to which was referred "An act to carry into effect a convention between the United States and the Republic of Cuba," signed on the 11th day of December in the year 1902, reports the same to the Senate, with the recommendation that the act be passed.

24213—06——1

(The following correspondence is reprinted from certified copies of the records of the State Department:)

Copy (B).
No. 65.]

DEPARTMENT OF STATE,
Washington, December 18, 1903.

SIR: I have the honor to inclose herewith a copy of the President's proclamation of the reciprocal Commercial Convention of December 11, 1902, between the United States and Cuba and a copy of the act approved December 17, 1903, to carry the convention into effect.

Referring to the requirement of the act that the President shall receive satisfactory evidence that the Republic of Cuba has made provision to give full effect to the articles of the convention, I have the honor to request that you will supply me with a statement that Cuba has made provision to give full effect to the articles of the convention, giving also the date when the convention shall go into effect in Cuba, which date should be the same as that fixed by the President for the United States.

Accept, Mr. Minister, the renewed assurances of my highest consideration.

Inclosures as above.

FRANCIS B. LOOMIS,
Acting Secretary.

Señor Don GONZALO DE QUESADA,
Etc., etc., etc.

No. 107.]

LEGACIÓN DE CUBA,
Washington, D. C., Diciembre 18 de 1903.

EXCELENCIA: Tengo el honor de acusar recibo de la atenta Nota de V. E. No. 65 de fecha de hoy, con la que me remite copia de la Proclama dada por S. E. el Presidente Theodore Roosevelt del Tratado de Reciprocidad que, con fecha 11 de Diciembre de 1902, se celebró entre Cuba y los Estados Unidos, y copia de la Ley aprobada en 17 de Diciembre de 1903, para poner en vigor la citada Convención.

Con esta fecha he recibido instrucciones de mi Gobierno, por cable, para que comunique á S. E. que en la "Gaceta Oficial" de este mismo dia se publicará la Proclama de S. E. el Presidente Tomás Estrada Palma, firmada ayer 17, poniendo en vigor, en la República de Cuba, desde el dia 27 de los corrientes, el citado Convencio; todo lo cual me es grato trasladar á V. E., contestando así su atenta Nota sobre las pruebas satisfactorias, en ella pedi das, de que el Gobierno de Cuba había tomada las medidas que dispone la Ley aprobada el 17 de Diciembre para poner en vigor el Tratado y la fijación de la fecha en que ha de comenzar á regir en Cuba, la cual es la misma en que el Convencio ha de hacerse efectivo en los Estados Unidos.

Tan pronto reciba la mencionada "Gaceta" tendré el honor de remitirla á V. E.

Aprovecho esta oportunidad para reiterar á V. E. el testimonio de mi más alta y distinguida Consideración.

GONZALO DE QUESADA.

Al Hon. FRANCIS B. LOOMIS,
Secretario de Estado Interino.

(C) Copy.

[Translation.]

CUBAN LEGATION,
Washington, D. C., December 18, 1903.

EXCELLENCY: I have the honor to acknowledge receipt of your excellency's esteemed note, No. 65, of to-day's date, with which you transmit copy of the proclamation by his Excellency President Theodore Roosevelt of the reciprocity treaty which, on the 11th of December, 1902, was entered into between Cuba and the United States, and copy of the law approved on the 17th of December, 1903, for putting the aforesaid convention into effect.

I have received instructions by cable to-day from my Government to inform your excellency that there will be published in the Official Gazette of to-day the proclamation of his Excellency President Tomas Estrada Palma, signed yesterday, the 17th, putting the aforesaid convention into effect in the Republic of Cuba from and after the 27th instant; all of which I am pleased to communicate to your excellency, and so answer your esteemed note concerning the satisfactory evidence therein requested that the Cuban Government has taken the measures required in the law approved on the 17th of December for putting the treaty into force and for the determination of the date when [the convention] shall go into effect in Cuba, which is the same as that on which it shall be in force in the United States.

As soon as I receive the aforesaid Gazette I shall have the honor to transmit it to your excellency.

I avail myself of this opportunity to reiterate to your excellency the assurance of my highest and most distinguished consideration.

GONZALO DE QUESADA.

To the Honorable FRANCIS B. LOOMIS,
Acting Secretary of State.

No. 108.] LEGACIÓN DE CUBA,
Washington, D. C., Diciembre 22 de 1903.

EXCELENCIA: Tengo el honor de remitir, adjunta, á V. E. la "Gaceta Oficial de la República de Cuba," fechada el 18 de Diciembre de 1903, en que aparece la Proclama de S. E. el Presidente T. Estrada Palma, fechada el 17 de Diciembre del mismo año, declarando que el Tratado

de Reciprocidad, concluido y firmado en 11 de Diciembre de 1902, empezará á regir en la República de Cuba desde el dia 27 del mes actual.

Aprovecho esta oportunidad para reiterar á V. E. el testimonio de mi más alta y distinguida consideración.

GONZALO DE QUESADA.

Anexo:
No. 145 Ano. 2°. de la "Gaceta Oficial de la Rep. de Cuba.
A. S. E. el Hon. FRANCIS B. LOOMIS,
Secretario de Estado Interino, etc., etc., etc.

[Translation.]

No. 108.] CUBAN LEGATION,
Washington, D. C., December 22, 1903.

EXCELLENCY: I have the honor to transmit herewith to your excellency the Official Gazette of the Republic of Cuba, dated the 18th of December, 1903, in which appears the proclamation of his excellency, President T. Estrada Palma, dated the 17th of December of the same year, declaring that the treaty of reciprocity, concluded and signed on the 11th of December, 1902, shall take effect in the Republic of Cuba from and after the 27th day of this month.

I avail myself of this opportunity to renew to your excellency the assurance of my highest and most distinguished consideration.

GONZALO DE QUESADA.

Appended:
Official Gazette of the Republic of Cuba, No. 145, 2d year.

To his excellency the Hon. FRANCIS B. LOOMIS,
Acting Secretary of State, etc., etc., etc.

[From the Gaceta Oficial de la República de Cuba, Habana, viernes 18 de diciembre de 1903.]

SECRETARIA DE ESTADO Y JUSTICIA.

DEPARTAMENTO DE ESTADO.

TOMAS ESTRADA PALMA,

Presidente de la República de Cuba.

A sus Habitantes, Sabed:

Que el día 11 de Diciembre de 1902 se concluyó y firmó en la Ciudad de la Habana, por medio de plenipotenciarios debidamente autorizados al efecto, un Tratado de Reciprocidad Comercial entre la República de Cuba y los Estados Unidos de América; el cual Tratado, con las modificaciones introducidas en el y aprobado definitivamente por el Senado de la República de Cuba en 28 de Marzo de 1903, es de la forma y del tenor siguientes:

* * * * * * *

Que de conformidad con el protocolo adicional suscrito en Washington el 26 de Enero de 1903, las ratificaciones fueron canjeadas en dicha ciudad el 31 de Marzo del corriento año.

Que el Congreso de los Estados Unidos de América aprobó el mencionado Tratado, de acuerdo con lo prevenido en el Artículo XI del mismo.

Y que el presente Tratado empezará á regir en la República desde el día 27 del mes actual.

Por tanto, mando se publique y se le de entero cumplimiento.

Habana, Palacio de la Presidencia, á 17 de Diciembre de 1903.

T. ESTRADA PALMA,
Presidente.

CARLOS DE ZALDO,
Secretario de Estado y Justicia.

[Translation.]

OFFICE OF STATE AND JUSTICE.

DEPARTMENT OF STATE.

TOMAS ESTRADA PALMA,
President of the Republic of Cuba.

To the people. Be it known:

That on the 11th of December, 1902, there was concluded and signed in the city of Habana, through plenipotentiaries duly authorized for the purpose, a treaty of commercial reciprocity between the Republic of Cuba and the United States of America, which treaty, with the changes introduced in it and finally approved by the Senate of the Republic of Cuba, is of the form and tenor following:

* * * * * * *

That in conformity with the additional protocol signed in Washington on the 26th of January, 1903, the ratifications were exchanged in said city the 31st of March of the present year.

That the Congress of the United States of America approved the said treaty in accordance with the provision of Article XI of the same.

And that the present treaty shall go into effect in the Republic from the 27th day of this month.

Therefore, I command that it be published in order that it may be completely fulfilled.

Habana, Palace of the President, December 17, 1903.

T. ESTRADA PALMA,
President.

CARLOS DE ZALDO,
Secretary of State and Justice.

O

FILE COPY.

Nos. 269 AND 652. OF OCTOBER TERM, 1905.

IN THE

Supreme Court of the United States.

The United States, Appellant,

vs.

The American Sugar Refining Company of New York.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

[File No. 19,770.]

Office Supreme Court U. S.
FILED
APR 26 1906
JAMES H. McKENNEY,
Clerk.

Franklin Sugar Refining Company, Appellant,

vs.

The United States.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

[File No. 20,154.]

BRIEF FOR THE SUGAR REFINING COMPANIES.

JOHN E. PARSONS,
JOHN G. JOHNSON,
H. B. CLOSSON,
For Sugar Refining Companies

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Press of Allen, Lane & Scott, Phila.

IN THE SUPREME COURT OF THE UNITED STATES.

October Term, 1905. No. 269.

The United States, Appellant,

vs.

American Sugar Refining Company of New York.

October Term, 1905. No. 652.

Franklin Sugar Refining Company, Appellant,

vs.

The United States.

BRIEF OF SUGAR REFINING COMPANIES, RESPECTIVELY APPELLEE AND APPELLANT.

The appeals are, respectively, one by the United States, from a judgment of the Circuit Court of the United States for the Southern District of New York, in favor of the American Sugar Refining Company; and the other, from a judgment by the Circuit Court of the United States for the Eastern District of Pennsylvania, adverse to the Franklin Sugar Refining Company.

In each case, the claim of the Refining Company is, that ten days after the exchange, on the 31st March, 1903, of ratifications of the convention of the 11th December,

1902, between the United States of America and the Republic of Cuba, viz., on the 10th April 1903, sugar imported into the United States from Cuba became entitled to a reduction of twenty per centum of the duty imposed by the Tariff Act of the United States, approved 24th July, 1897. This claim is denied by the United States, which contends that the reduction did not begin until ten days after the issuance by the President of the United States, on the seventeenth day of December, 1903, of his proclamation. The date of this proclamation, and that of the passage of an Act of Congress upon the subject, to which reference will later be made, are the same.

The Collector of Customs of the Port of New York, in the case of the American Sugar Refining Company, and of the Port of Philadelphia, in that of the Franklin Sugar Refining Company, refused to make the reductions.

In New York the sugars were entered for consumption at various dates, between the 12th June, 1903, and the twenty-eighth day of September, 1903. An estimate of the duties having been made, the amount thus estimated was paid and, prior to December, 1903, the sugars were withdrawn. The duties were liquidated provisionally on or about the 15th October, 1903. Protests were duly filed. An appeal was taken to the Board of General Appraisers, which, on the 28th April, 1904, decided against the protestants. This decision was appealed to the Circuit Court for the Southern District of New York, which reversed the same. From the decision of that court the United States appealed. Its appeal is No. 269.

The sugars in Philadelphia, were imported on or about the 29th September, 1903, and were entered in bonded warehouse. On or before the 17th December, 1903, the duties were estimated and were paid. Permits for the removal for consumption from the warehouse, were delivered to the Refining Company prior to December, 1903. All sugar was actually removed before that date, except 4529 bags of sugar and 67 bags of

sweepings. These were not removed until the twenty-eighth and twenty-ninth days of December, 1903, respectively. In Philadelphia, the liquidation of duty was made on the twenty-fifth day of March, 1904. Protests were duly filed, demanding *inter alia*, reliquidation, which reliquidation was refused on the twenty-fourth day of June, 1904. An appeal, taken to the Board of General Appraisers, was decided adversely to the claim of the Refining Company. From that decision an appeal was taken to the Circuit Court of the United States for the Eastern District of Pennsylvania, which sustained the Board of General Appraisers.

The appeal from the decision of that court is No. 652.

The Refining Companies contend: (1) that all the sugars imported after the tenth day of April, 1903, were entitled to an allowance of twenty per centum, and (2) that, in any event sugars not actually removed from the bonded warehouse until after the twenty-seventh day of December, 1903, were thus entitled.

A convention between the United States and Cuba, duly signed and sealed by the respective plenipotentiaries, bearing date 11th December, 1902, provided, *inter alia* (Record 26):—

> "The President of the United States of America
> "* * * and the President of the Republic of Cuba
> "* * * have in consideration of and in compen-
> "sation for the respective concessions and engage-
> "ments made by one to the other, as hereinafter re-
> "cited, agreed, and do hereby agree upon the follow-
> "ing Articles for the regulation and government of
> "their reciprocal trade, namely:—
>
> "ARTICLE II.
>
> "During the term of this convention all articles of
> "merchandise not included in the foregoing Article
> "I., and being the product of the soil or industry of
> "the Republic of Cuba imported into the United
> "States shall be admitted at a reduction of 20 per
> "centum of the rates of duty thereon, as provided by

"the Tariff Act of the United States approved July "24th, 1897, or as may be provided by any Tariff Law "of the United States subsequently enacted.

"ARTICLE III.

"During the term of this Convention, all articles of "merchandise not included in the foregoing Article "I. and not hereinafter enumerated, being the product "of the soil or industry of the United States imported "into the Republic of Cuba shall be admitted at a "reduction of 20 per centum of the rates of duty "thereon, as now provided or may hereafter be pro- "vided by the Customs Tariff of the Republic of "Cuba."

In the articles from IV. to VII. inclusive, there were provisions, "during the term of this Convention," for reductions upon various articles therein enumerated, "being "the product of the soil or industry of the United States "imported into Cuba," of the rates of duty thereon as theretofore provided, or as might, thereafter be provided, by the Customs tariff, of the Republic of Cuba.

Article XI. of the convention reads thus (Record 30) :—

"The present Convention shall be ratified by the "appropriate authorities of the respective countries "and the ratifications shall be exchanged at Wash- "ington, District of Columbia, United States of "America, as soon as may be before the thirty-first "day of January, 1903, and the Convention shall go "into effect on the tenth day after the exchange of "ratifications, and shall continue in force for a term "of five years from the date of going into effect and "from year to year thereafter until the expiration of "one year from the day when either of the contract- "ing parties shall give notice to the other of its in- "tention to terminate the same."

The President transmitted the convention to the Senate on the 16th December, 1902, and invited its attention to the fact that the time within which the ratifi-

cation must take place was, by the terms thereof, limited to 31st January, 1903. On the 26th January, 1903, however, a supplementary convention was made between the United States and Cuba which extended the time for ratification, in the following words:—

> "The respective ratifications of the said Conven-
> "tion shall be exchanged as soon as possible, and
> "within two months from January 31st, 1903."

The Senate having been convened in extraordinary session for the sole purpose of considering this convention and a pending treaty with the Republic of Columbia, its Committee on Foreign Relations, on the 12th March, 1903, reported the treaty, with amendments, which added the word "cattle" to schedule C, *i. e.* to a schedule which provided for a reduction of forty per centum on certain articles therein enumerated, the product of the soil or industry of the United States imported into Cuba.

At the end of article VIII, which, as originally executed, had provided that the rates of duty therein granted to the United States by the Republic of Cuba were to continue during the term of the convention, preferentially in respect to all like imports from other countries, and that because of the concession in that respect, "dur-"ing the term of the Convention," the rates of duty granted by the Republic of Cuba on the products of the United States should likewise be and continue similarly preferential, was added a proviso reading thus (Record 29) :—

> "*Provided*, That while this Convention is in force
> "no sugar imported from the Republic of Cuba, as
> "being the product of the soil or industry of Cuba,
> "shall be admitted into the United States at a reduc-
> "tion of duty greater than 20 per centum of the rates
> "of duty thereon, as provided by the Tariff Act of the
> "United States, approved July 24th, 1897, and no
> "sugar the product of other foreign countries, shall
> "be admitted by Treaty or Convention with the
> "United States while this Convention is in force, at

"a lower rate of duty than that provided by the Tariff "Act of the United States approved July 24th, 1897."

At the end of article XI. were added the following words (Record 30):—

"This Convention shall not take effect until the "same shall have been approved by the Congress."

Reference to the *Congressional Record* of November 30th, 1903, gives the following explanation by Senator Bacon, at a time when the House bill to carry the convention into effect was under discussion in the Senate, of the intent of this addition:—

"The provision in the treaty which requires this "legislation may in the language which is used be "misleading. * * * when it says that 'this con-"'vention shall not take effect until the same shall "'have been approved by the Congress.' I very "frankly confess that the language is not felicitously "chosen. I offered that as an amendment to the "treaty. It was not a part of the treaty as originally "negotiated by the President and sent to the Senate. "I am the author of it so far as this treaty is con-"cerned, and I wish to say now that I used that lan-"guage, not because I thought it was the best lan-"guage for the purpose, but because the Foreign "Relations Committee had previously used the same "language as to other reciprocity treaties, and I did "not wish that there should be any issue raised by "its opponents as to phraseology. The idea that the "Congress can approve a treaty is utterly fallacious. "Congress has no such prerogative and can perform "no such office. The proper language would have "been that 'this convention *shall not have been of* "'*binding force until made effectual by Act of Congress,* "'*which shall enact a tariff law in accordance there-*"'*with.*'"

The "other reciprocity treaties" referred to by Senator Bacon are those which were under consideration by the Senate on December 15th, 1902, when the report of its

Committee on Foreign Relations was submitted to it. (57th Congress, 2d Session: Senate Document S. B. 47.) In this report, the question whether certain reciprocity treaties might still be ratified by the Senate, although the two years stipulated for that purpose in section 4 of the Act of July 24th, 1897, had expired, was considered and answered in the affirmative. It likewise contained the following:—

> "Whether such treaties operate without the ap-
> "proval of Congress to change tariff duties thereto-
> "fore fixed by law is a question not involved, and
> "upon which the sub-committee expresses no opin-
> "ion. * * * It is entirely competent for the
> "Senate to amend these treaties so as to provide that
> "they shall not take effect *without the approval of*
> "*Congress.*"

Several treaties have thus been provided, among others, that with the Hawaiian Government in 1876. The sub-committee, therefore, recommended, without reference to the merits thereof, that each of said treaties be amended by the Senate by inserting therein the following additional provision: "This treaty shall not take "effect until the same shall have been approved by the "Congress."

The amendments recommended by the Foreign Relations Committee were, on the 10th March, 1903, adopted by the Senate, and the ratification of the convention as thus amended was advised by it.

On 22d March, 1903, the President of the Republic of Cuba convened an extraordinary session of the Senate of Cuba for the purpose of ratifying the treaty as amended by the United States Senate, and on the 23d March, he sent a message to it, to the effect that unless the amendments recommended by the United States Senate on 12th March, 1903, should be by it approved, it would be impossible to conclude the reciprocity treaty.

On 27th March, 1903, Secretary Hay sent a warning to Cuba, that the slightest amendment to the Reciprocity Treaty by the Cuban Senate, would defeat the

convention itself, since any amendments must be submitted to the United States Senate, and, before this could be done, the date fixed for the final exchange of ratifications, viz., March 31st, 1903, would have passed.

On the 28th March, 1903, the convention was ratified by the Cuban Senate, and on March 30th it was ratified by the Presidents of the United States and of Cuba.

On 31st March, 1903, ratifications were exchanged.

Congress, on the 17th December, 1903, gave its approval by an Act to carry the provisions of the treaty into effect, which was entitled "An Act to carry into "effect a convention between the United States and the "Republic of Cuba, signed on the eleventh day of Decem-"ber, in the year 1902." Stats. at Large 58th Cong., 1st Session, p. 3).

The first section of this Act provided, *inter alia*, as follows:—

> "Whenever the President of the United States "shall receive satisfactory evidence that the Repub-"lic of Cuba has made provision to give full effect "to the articles of the convention between the United "States and the Republic of Cuba, signed on the elev-"enth day of December, in the year nineteen hundred "and two, he is hereby authorized to issue his proc-"lamation declaring that he has received such evi-"dence, and thereupon, on the tenth day after ex-"change of ratifications of such convention between "the United States and the Republic of Cuba, and so "long as the said convention shall remain in force, "all articles of merchandise being the product of the "soil or industry of Cuba which are now imported "into the United States free of duty shall continue "to be so admitted free of duty, and all other arti-"cles of merchandise being the product of the "soil or industry of the Republic of Cuba imported "into the United States shall be admitted at a reduc-"tion of twenty per centum of the rates of duty "thereon, as provided by the tariff act of the United "States. * * *"

At the end of the first section there is the following proviso:—

"That nothing herein contained shall be held or "construed as an admission on the part of the House "of Representatives that custom duties can be "changed otherwise than by an Act of Congress, "originating in said House."

This Act does not deal with the convention, excepting to such extent as it legalizes the reduction, in favor of merchandise, the product of the soil or industry of the Republic of Cuba imported into the United States, below the rate of duties fixed by the Tariff Act of the United States.

On the 17th December, 1903, the President issued his proclamation, in which he recited that there had been an exchange of ratifications of the convention by the two Governments in the city of Washington, on the thirty-first day of March, 1903; that the Senate of the United States had added, at the end of Article XI, the amendment above recited; and that Congress had given its approval to said convention by Act approved 17th December, 1903. He proclaimed that satisfactory evidence had been received by him that the Republic of Cuba had made provision to give full effect to the articles of said convention; and that the said convention, as amended, was in effect on the tenth day from the date of his proclamation.

From this recital it appears that we must deal, not so much with the interpretation of an Act of Congress, as with an interpretation of a contract entered into between two Governments, one of which did not participate in said Act.

We submit that it is not necessary to consider the effect of the requirement of the Act of 17th December, 1903, referring to the receipt by the President of the United States of "satisfactory evidence that the Republic of Cuba "has made provision to give full effect to the articles of "the convention," because the receipt of such evidence was merely made a condition to the issuance of a proclamation, which would announce that the convention was in force according to its own terms.

The discussion will involve a consideration of the subject under five heads:

I. The commencement of the Term during which the convention was to be in force according to the original provisions thereof.

II. The effect upon the commencement of the term of the convention of the addition of the words, "This convention shall not take effect until the "same shall have been approved by the Congress."

III. The effect, if any, upon the time of commencement of the term of the convention, of the Act of Congress of 17th December, 1903.

IV. As, in the case of the New York importations, there was a suspension of the liquidation until a date subsequent to December, 1903, ultimate liquidation was required to be made under a reduction at that time conceded to be in force.

V. In the case of the Philadelphia importations, the liquidation was not made until after December, 1903, and was therefore required to be made in accordance with the Tariff Act as then in force.

I. The commencement of the term during which the Convention was to be in force according to the original provisions thereof.

We contend that by the convention itself, the term of its duration was fixed, viz., five years from the tenth day of April, 1903, which date was ten days after that of exchange of the ratifications by the respective Governments.

This contention rests upon the unequivocally expressed provision that "the convention shall go into effect on the "tenth day after the exchange of ratifications, and shall "continue in force for a term of five years from the date "of going into effect."

The treaty, as made by the respective plenipotentiaries,

after execution by them, required the confirmation of the Presidents of the respective Governments, and of the Senates of each country.

Until these confirmations, there could be no exchange of ratifications, and of course it was necessary to provide that it should not go into effect until such exchange, which would amount, practically, as between the two contracting parties, to a mutual delivery of an executed and confirmed deed.

As originally drafted, the convention must have failed altogether, because of the inability to exchange ratifications on or before the thirty-first day of January, 1903. The supplemental convention which was entered into, was requisite to save such failure; but it still remained necessary the exchange should take place on or before the thirty-first day of March, 1903.

What has already been recited concerning the provisions of the convention shows that in every instance it was prescribed that the reduction, &c., should continue "during the term of this convention." This made it absolutely necessary, therefore, that in the convention itself the "term" thereof, should be prescribed.

Nothing could more clearly have expressed the time of commencement of the term than the words which, as to the treaty, declared that it "shall go into effect on," &c.

There was an obvious reason why a limit of time for commencement of the reduction was fixed. The principal product which would be imported into the United States from Cuba would be sugar. The negotiations for the Treaty were conducted, we may assume, in anticipation of the exportation to, and importation into, the United States, of the crop for 1902. In the ordinary course of trade, this crop would begin to be imported in February, 1903, the importations being at their maximum in April, and ceasing substantially on the first day of July.

The date originally fixed for the commencement of the reduction would have given the whole of this crop the benefit thereof. Only because of necessity, this date

was so extended that the convention would not give the benefit of the reduction until the early part of April, 1903. It was important, however, to secure the earliest possible date of commencement, to cover as much as possible of that crop. An extension of the date to December, 1903, would have lost to Cuba the benefit of a reduction upon a crop which was undoubtedly in the minds of both the contracting parties.

II. The effect upon the commencement of the term of the Convention of the addition of the words, "This Convention shall not take effect until the same shall have been approved by the Congress."

Of course we must deal with the effect of words inserted, at the instance of the Senate of the United States, in accordance with the report of its Committee on Foreign Relations; providing that "This convention shall not take "effect until the same shall have been approved by the "Congress."

Can it be successfully contended it was *intended* by the Senate or by any of the parties to the treaty, that the contract itself was meant to be altered, either in the matter of its term—the beginning or the end thereof—or in any other particular?

Whatever may be urged as to the interpretation of the convention, with these words inserted, we submit it cannot be urged, with conviction, that the intent was to *alter*, or to do anything other than to guard against the possibility of its becoming non-enforceable because of its affecting a tariff duly enacted by the Congress of the United States.

One of the provisoes, inserted in the Act, discloses the jealousy of the House of Representatives of its right, claimed by it to exist, that customs duties could not be changed other than by "an Act of Congress originating "in said House."

The Senate, it may be assumed, was equally jealous of its right of approval of treaties without any consent of

the House of Representatives. We think it may be asserted, confidently, it was not intended by the Senate, that Congress should approve the treaty, but simply that it should give approval to what might be necessary, in the way of legislation, in removing all possibility of question of enforcement in the United States, of its conditions.

Of course, in considering the effect of the insertion, we must admit, that, ordinarily, matter added at a subsequent date, inconsistent with what had theretofore been done, ought, to the extent of the inconsistency, to be construed as would a codicil to a will or a supplemental article to an agreement.

We may, however, insist that if it had been intended to alter the term of the convention, this would have been done by striking out the words "the convention shall go "into effect on the tenth day after the exchange of rati-"fications," and by substituting therefor, the words "the "convention shall go into effect upon the same being ap-"proved by the Congress," not, however, prior to the tenth day after the exchange of ratifications. The words are not "This convention shall not go into effect until the "same shall have been approved by the Congress," but are, "This convention shall not *take* effect until," &c.

The Senate knowing it had been provided the term should commence "on the tenth day after the exchange "of ratifications," did not alter said provision; but knowing, also, that a question existed as to the right to make any treaty which altered a revenue law, it directed that though the term should continue as prescribed, the convention itself should not be effective until approved by the Congress. The approval, as we have suggested, however, was not to be of the treaty, as such, but of the doing of that which affected the revenue law.

No doubt as to the actual intention of the Senate can exist, in view of the explanation of Senator Bacon, and of what was said in its Committee's report as to the ratification of certain reciprocity treaties to which we have already referred. This report shows that the Senate con-

sidered the words, "prohibiting the taking of effect until the "same shall have been approved by Congress," as the equivalent of the words, "shall not take effect without the "approval of Congress."

It was not intended by the Senate, by the insertion of these words, to affect the exchange of ratifications. It was evident that if this should not take place on or before the 31st March, 1903, the convention would fall, by its own terms. Knowing that the ratifications must be thus exchanged, it was obvious the term must commence, anterior to the time when Congress could act, inasmuch as it had adjourned, the Senate being in session under a special call.

The Senate must be assumed to have known that the exchange of ratifications which must take place, would put the convention in the position of a deed delivered in escrow. A deed, thus delivered, it is well settled, when the *escrow* terminates, will be treated as effective as of the date of such conditional delivery.

We must read article XI., it is true, with the words we are considering added, but we must read it as a whole, not simply the added words.

The rules of construction require that so far as may be, all parts of an agreement shall be regarded. If it had been intended the added words should repeal those first used, it would have been so said.

Presumably the original words were meant to continue to have effect, because they were allowed to remain, without alteration.

An interpretation can be made which will render the whole of the article effective—that for which we contend—holding the term to continue without alteration, but the convention itself not to have been a binding obligation until something had been done by Congress by way of legislation, necessary, or at least deemed desirable.

In other words, when the Senate said: "The Treaty should not take effect *until* the same shall have been approved by the Congress," it meant only that: "This Treaty shall not take effect *unless* it shall be approved by

the Congress." The word "until" was used, with no idea of expressing futurity; but to convey the implication that in all human probability the condition was one which would, in due time, be fulfilled. The Cuban Government might rely on the assurance of this. See 6 Op. Atty. Gen. 296 Cush:—

> "When a Treaty cannot be executed without the "aid of an Act of Congress, it is the duty of Congress "to enact such laws. Congress never failed to per- "form that duty."

It is pre-eminently necessary, in the interpretation of a contract between two parties, that words, added at the instance of one shall be so construed, if possible, as to give effect to that part thereof which represents the intentions of both, because made by both.

As this court has held, in the absence of any expression to the contrary, in the case of a treaty, it becomes binding, immediately upon the exchange of ratifications. In the present case, the binding force was agreed to be postponed for ten days.

Had Congress failed to legislate, the convention must have failed, because of the inserted provision; but inasmuch as it enacted what was necessary, the only bar to its enforcement, in accordance with its exact terms as drafted, was removed.

It was not intended by the added words to permit Congress to modify the treaty. Such modification would be the action of but one, of two, contracting parties. Whatever Congress might do, necessarily must be done in the way of approval or rejection of the convention as written.

In this connection it might not be amiss to refer to what seems to have been the view of the Board of General Appraisers, judging from the language following (Record in No. 269 p. 9):—

> "The Act of Congress approving the treaty, in one "aspect, seems from its language to indicate that it "was not to go into effect until the President has

"received and passed on the evidence required to be "considered by him, and it must be satisfactory to "him, showing that the Republic of Cuba had made "provision to give full effect to the Articles of the "Convention."

Any such construction, however, would make a treaty, which represented the agreement of the two Governments, take effect, only when the President of one should see fit to issue his proclamation.

As has been held by this court, in Field *vs.* Clark, 143 U. S., 649, Congress may provide that the date from which reciprocity provisions in an Act shall take effect may be fixed by a proclamation of the President; but in the present case, there was no provision that the President, by his proclamation, should fix the time from which the treaty should take effect.

In the Field case, the Act which was considered, was that of 1st October, 1890, which prescribed, in terms, that the President, by his proclamation, might suspend provisions relating to the free introduction of sugar.

III. The effect, if any, upon the time of commencement,of the term of the convention of the Act of Congress of 17th December, 1903.

In determining the meaning and effect of the Act of Congress it is necessary to bear in mind the fact that it is the meaning of the convention, not that of Congress, as embodied in this Act, which we must ascertain, the first being the act of the two contracting parties, whilst the latter emanates only from one.

No construction will be given to the Act which, in any way, will affect the contract. It was in the power of Congress to refuse to legislate by way of amendment of the Tariff Act, but it possessed no other power in the matter.

The beginning, and the end, of the Act, was the removal of any bar in the way of a question as to the right, in the United States, to make valid a treaty, which provided for the payment of duties upon imports, less than those which had been prescribed by Act of Congress.

As we have seen, by reference to the Act itself, nothing more was attempted, and we would expect, in the Act, to see no dealing, interfering with the term, or with the conditions, of the convention.

We would expect the Act of Congress would recognize the fact that by treaty, for a period of time, it had been agreed the customs duties should be reduced, and that, during such period, this reduction would be legalized.

The title of the Act indicates its purpose, viz., "An Act "to carry into effect a convention between the United "States and the Republic of Cuba, signed on the eleventh "day of December in the year nineteen hundred and "two"—not an Act to alter the convention, the time of its beginning or ending, or the conditions thereof, but one to *carry into effect* such convention, as executed.

If the Act does not go beyond the purpose disclosed by its title, it cannot be so construed as to affect in any way the agreement. The convention itself, being reciprocal, grants to those exporting from the United States to Cuba certain reductions and exemptions. With these the Act of Congress does not attempt to deal. So far as the convention dealt with the importation into the United States of certain articles, it was necessary, or was thought advisable, to provide. Such provision, and none other, was made.

It was necessary to permit a reduction of the tariff duties during the whole term in which, by the convention, it was provided they should be reduced.

What was the term during which legislation was required and was enacted?

Congress, recognizing, to the full, the fact it could not alter the convention without destroying the same, therefore provided that "so long as the said convention shall re- "main in force" importations should be permitted, at the reduced rate of duty.

It was well, in permitting the reduction during the time the convention should remain in force, to allude to the term thereof, not by way of approval, or disapproval, of such duration, but of recognition of the time during which the Act would be in effect.

The President was therefore authorized to issue his proclamation upon the receipt of certain evidence. Thereupon, on the tenth day after exchange of ratifications of such convention between the United States and the Republic of Cuba, and "so long as the said convention shall remain "in force, * * * all articles of merchandise being the "product of the soil or industry of the Republic of Cuba "imported into the United States shall be admitted at the "reduction of 20 per centum of the rates of duty thereon "as provided by the Tariff Act of the United States, "approved July 24th, 1897."

In the convention, a time for its commencement has been prescribed, ten days after the exchange of ratifications; the duration to be five years. A provision was inserted which had suspended the putting into effect of the convention until the obtaining of the Act of Congress we are considering. This Act, when obtained, provided that the term should begin and end as had been originally directed.

Is it possible to say that Congress intended the reduction should also begin at a date not less than ten days after the passage thereof, viz., not before the 27th of December, 1903, when, knowing there had been an exchange of ratifications on the thirty-first day of March, 1903, it directed that the reduced duty should be payable for a term of five years from "the tenth day after the exchange of ratifications"?

The convention was intended to be in force, as was unequivocally expressed, for five years. If it be held the reduction of duty began only after the twenty-seventh day of December, 1903, the Republic of Cuba acquired, by virtue of the convention, the right to export at the reduced rate into the United States, not for five, but for less than five, years.

The Act of Congress, being enacted by the Senate as well as by the House of Representatives, is a cotemporaneous construction, by the Senate, of its meaning when it caused to be inserted into the convention, the words, "this conven- "tion shall not take effect until the same shall have been "approved by Congress."

The question is not affected by the fact that importations had taken place between the thirty-first day of March and the twenty-seventh day of December, 1903, some of which had been attempted to be liquidated under the provisions of the Act of 1897. The New York liquidations, involved in the cases before this court, were made under such circumstances as permitted a reliquidation, and in fact only after December 1903, as we shall endeavor to show. The Philadelphia importations were not liquidated until after December, 1903. Even if duties had been collected antecedently to the passage of the Act of Congress it would become the duty of the United States, in favor of Cuba, whose products had been overcharged, to provide for a refunding.

The Republic of Cuba was entitled, under the convention, to demand that its products should be admitted into the United States after the tenth day of April, 1903, at the reduced rate.

The Board of General Appraisers referred to the decision of this court, in United States *vs.* Burr, 150 U. S., 78; but in that case it clearly appears, by a review of the history of that Act, that it was intended by Congress the duties should not go into effect until after its passage. In that case the bill was introduced into the House of Representatives on the 10th December, 1893, and was passed by it on the first day of February, 1894. As then passed the Act provided it should go into effect "on or "after the first day of January, 1894, unless otherwise es- "pecially provided."

The bill was laid before the Senate on the 2d February, 1894, and was reported to it, by its Finance Committee, on the 22d March, 1894. When so reported, it contained the date of the 30th June, 1894, instead of that of the first day of January, 1894. As thus amended, the Senate passed the bill on the 3d July, 1894, the date having been altered, in the meanwhile, from the 30th June, 1894, to the 1st August, 1894. Because of a long discussion and

deliberation by the Committees of Conference, the bill, as it had been amended in the Senate, was not finally passed by the House until the 13th August, 1894.

Nothing could more clearly have disclosed the intention of Congress, through all its stages, that the Act should not become effective until after its passage, than was shown by what was done in changing from time to time, the date at which it should go into effect.

As finally enacted, it did not actually repeal the prior Act of 1st October, 1890, in terms, until the 28th August, 1894, and its repealing section expressly kept in force the right and liability of the Government or of any person, which had been incurred or accrued, prior to its passage.

Congress, in passing the Act of December, 1903, did so with the knowledge that at that time the ratifications of the convention had been exchanged. With this knowledge, it provided that the reduction should be for a term commencing "on the tenth day after exchange" of such ratifications.

Can it be, if Congress intended the reduction should only commence after the passage of the Act, that it would have adopted, for its commencement, the happening of an event which had already occurred?

We recognize the fact that a construction will usually be put upon an Act which will not make it retroactive, but where it was incumbent on the body which passed the Act, to make it retroactive, and where words were adopted which can only be properly construed as producing such result, no canon of construction can be invoked which will defeat the performance of a duty clearly intended to be performed.

To sustain the decision of the Board of General Appraisers it would be necessary to hold that words, inserted for the purpose of delaying the binding effect of a contract, which stipulated for the doing of something at a period, to commence at a designated time and to endure for five years, were inconsistent with what was prescribed by the contract as to the actual period of its duration.

Such construction would require a disregard of the purpose in inserting the words in question, and the plain intendment of everything done by those who understood the reason of such insertion.

To illustrate: A. and B. enter into a contract by which A. leases certain premises to B. for a prescribed term of years. Something requires to be done for A. in the way of removing a question as to his power to execute the lease. He provides that despite the execution he shall not be bound until that something is done. Would it be inferred from such provision that he intended the term itself should be limited?

Would it be so inferred if, at the time the thing was done, A. had declared that the original term should continue, as originally agreed?

As originally drafted, the time of commencement, not later than ten days after the thirty-first day of January, 1903, or, as provided for in the supplement, not later than ten days after the thirty-first day of March, 1903, was unquestionably deemed important.

Nothing appears in the record disclosing any intention on the part of either of the contracting parties, certainly not on the part of the Republic of Cuba, to alter the time of commencement.

IV. In the case of the New York importations, as there was a suspension of the liquidation until a date subsequent to December, 1903, the ultimate liquidation conwas required to be made under a reduction at that time conceded to be in force.

We will consider this proposition under three subdivisions:—

1. The effect of the importers' protest and appeal from the decision of the Collector to the Board of General Appraisers was to suspend the liquidation of the duties upon merchandise until after its disposition of the appeal; which was not made until April 1904 (fols. 13, 21), months after the Cuban Treaty had become the law of the land.

This principle is the necessary result of the language of the Customs Administrative Act and the revisory powers with which it endows the Board of General Appraisers.

The Act of June 10, 1890, provides: —

> SEC. 14. "The decision of the Collector as to the "rate and amount of duties * * * shall be final "and conclusive * * * unless the owner, etc., "shall * * * if dissatisfied with such decision, "give notice in writing to the Collector, setting forth "therein distinctly and specifically * * * the "reasons for his objections thereto. * * * Upon "such notice and demand the Collector shall transmit "the invoice and all the papers and exhibits con- "nected therewith to the Board of three General Ap- "praisers * * * which Board shall examine and "decide the case thus submitted; and their decision "or that of a majority of them shall be final and con- "clusive upon all persons interested therein, and the "record shall be transmitted to the proper Collector "or person acting as such, *who shall liquidate the entry "accordingly; except* in cases where an application "shall be filed in the Circuit Court," etc.
>
> "SEC. 15. "If the owner, etc., shall be dissatisfied "with the decision of the Board of General Apprais- "ers, etc., they, or either of them, may within thirty "days next after such decision and not afterwards "apply to the Circuit Court of the United States "within the district in which the matter arises for a "review of the questions of law and fact involved in "such decision. * * * The decision of such Court "shall be final, and the proper Collector or person "acting as such *shall liquidate the entry accordingly*, "*unless* such Court shall be of opinion that the ques- "tion involved is of such importance as to require a "review of such decision by the Supreme Court of "the United States," etc.

In United States *vs.* Goldenberg, 168 U. S., 95, 100: *Mr. Attorney-General, arguendo said:*—

> "The finality of the Collector's decision is destroyed "by filing the protest. Until decision by the Board "of General Appraisers it remains open to review."

2. If, while the importer's protest and appeal were pending *sub judice*, either before the Board of Appraisers or before the Circuit Court, and while the duties therefore still remain unliquidated, so much of the statute as imposed upon these imports more than eighty per cent. of the general tariff rates was repealed, as of a date prior to that of the importation, it was the duty both of the Board of Appraisers and of the Circuit Court to give effect to the repeal and to reverse the Collector's decision, even though correct when made. 26 Am. & Eng. Ency. of Law, 2nd Ed., p. 748:—

> "Though it is, as a general rule, the province of "an appellate court to inquire only whether the judg- "ment appealed from was in accordance with the law "at the time it was rendered, yet if, pending the ap- "peal, the law which authorized the judgment is re- "pealed, the judgment must be reversed."

United States *vs.* Schooner Peggy, 1 Cranch, 103: During the War with France an armed French vessel had been captured, and, on September 23rd, 1800, condemned as a lawful prize by the Circuit Court. From this judgment of condemnation a writ of error was prosecuted to this Court. While the case was pending in this Court on December 21st, 1801, a convention between France and the United States, was ratified, the fourth articles of which provided that "property captured and not yet definitely condemned * * * shall be mutually restored."

This Court speaking through Mr. Chief Justice Marshall said:—

> "In this case the sentence of condemnation was "appealed from. It might have been reversed and "therefore was not such a sentence as in the contem- "plation of the contracting parties, on a fair and hon- "est construction of the contract, was designated as "a definitive condemnation.
>
> "It has been urged that the Court can take no

"notice of the stipulation for the restoration of prop-
"erty not yet definitely condemned; that the Judges
"can only inquire whether the sentence was erroneous
"when delivered and that if the judgment was correct
"it cannot be made otherwise by anything subsequent
"to its rendition.

"The Constitution of the United States declares
"a treaty to be the supreme law of the land. Of con-
"sequence, its obligation on the courts of the United
"States must be admitted. * * * It is, in the
"general, true that the province of an appellate court
"is only to inquire whether a judgment when ren-
"dered was erroneous or not, but if subsequent to
"the judgment and before the decision of the appel-
"late court, a law intervenes and positively changes
"the rules which govern, the law must be obeyed
"or its obligation denied. If the law be con-
"stitutional, and of that no doubt in the pres-
"ent case has been expressed, I know of no
"court which can contest its obligation. It is
"true that in mere private cases between indi-
"viduals the Court will and ought to struggle hard
"against a construction which will, by a retrospective
"operation affect the rights of parties; but in great
"national concerns, where individual rights acquired
"by war are sacrificed for national purposes, the con-
"tract making the sacrifice ought always to receive
"a construction conforming to its manifest import.
"* * * The Court must decide according to ex-
"isting laws and if it be necessary to set aside a judg-
"ment rightful when rendered, but which cannot be
"affirmed but in violation of law, the judgment must
"be set aside."

It is plain that the case at bar is well within the decision in the case of "The Peggy"; where this Court resolutely gave effect to the "manifest import" of an international compact, althought recognizing that it thereby required for national purposes a sacrifice of individual rights, duly adjudged, of our own citizens. In the case at bar, it would be not the enforcement of the treaty but a refusal to enforce it according to its manifest import, which

would entail a sacrifice of individual rights; to wit, the right of the Cuban exporter and the American importer of these sugars to bring them into this country after the ratification of the treaty at eighty per cent. only of the former duty. By the enforcement of this treaty nothing is sacrificed except the right of the Government to the additional twenty per cent. of duties, to sacrifice which was the very purpose of the Government in making the treaty.

3. While the importers' protest and appeal were still *sub judice* before the Board of Appraisers, and before the duties had been liquidated; so much of the statute as imposed more than eighty per cent. of the regular duties upon these imports was repealed, and the repeal by its very terms took effect as of a date prior to the date of the importation.

It was not until April 28th, 1904, that the Board of Appraisers acted upon the importers' protest and appeal. In the meantime the Cuban treaty upon its approval by Congress on December 17th, 1903, four months before, had become the law of the land. Article II. of that treaty provided that "during the term of this convention" all Cuban sugars should be admitted at a reduction of twenty per cent; and as to the term of the convention that it should "go into effect on the tenth day after the exchange or ratifications, and continue in force for the term of five years from the date of going into effect." The tenth day after the exchange of ratifications was April 10th, 1903. The sugars were imported in June, July, August and September, 1903. (fol. 3).

V. In the case of the Philadelphia importations, the liquidation was not made until after December, 1903, and was therefore required to be made in accordance with the Tariff Act as then in force.

All that has been said under the fourth head, applies with greater force under the present, where there was no liquidation until after the convention was concededly in effect.

JOHN E. PARSONS,
JOHN G. JOHNSON,
H. B. CLOSSON,
For Refining Companies.

FILE COPY

Nos. 269 and 652 of October Term, 1905.

IN THE

Supreme Court of the United States.

Supreme Court U. S.
FILED
MAY 4 1906
JAMES H. MCKENNEY,
Clerk.

THE UNITED STATES,

Appellant,

vs.

AMERICAN SUGAR REFINING COMPANY OF NEW YORK.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.
[FILE NO. 19,770.]

FRANKLIN SUGAR REFINING COMPANY,

Appellant,

vs.

THE UNITED STATES.

SUPPLEMENTAL BRIEF FOR SUGAR REFINING COMPANIES.

JOHN E. PARSONS,
JOHN G. JOHNSON,
H. B. CLOSSON,
For Sugar Refining Companies.

BYRNES POST JOB PRINTING OFFICE, NEW YORK.

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IN THE

Supreme Court of the United States.

OCTOBER TERM, 1905.

No. 269.

THE UNITED STATES,
Appellant,

AGAINST

AMERICAN SUGAR REFINING COMPANY OF NEW YORK.

October Term, 1905.

No. 652.

FRANKLIN SUGAR REFINING COMPANY,
Appellant,

AGAINST

THE UNITED STATES.

SUPPLEMENTAL BRIEF FOR IMPORTERS.

I.

Congress enacted in the very words of the Treaty itself that its term should begin "on the tenth day after exchange of ratifications of such Convention,"

to wit, on April 10, 1903. The Government attempts to meet this difficulty by informing the Court that this action of Congress was either ignorant or inadvertent, or both; and by urging the Court with its better information and more careful judgment to strike out this language from the Act.

With great respect we submit that it is altogether improper for the Executive Department to stigmatize any act of another Department as ignorant or inadvertent, whether the comment be made to the Judicial Department upon an act of the Legislative Department or to the Legislative Department upon an act of the Judicial Department.

In the present case the criticism is as unfounded as it is improper. Congress was not in December, 1903, when it passed this act in the least ignorant of the fact that on the 31st of the previous March the exchange of ratifications of the treaty had taken place in Washington at the office of the Secretary of State. On the day following, the fact had been published in the newspapers to the world; and had thereupon become a part of the public history not only of the country, but of the particular treaty itself under consideration by Congress.

Nor was it at all by any inadvertence that this provision found its way into the Act of Congress. On the contrary, for reasons as good and sufficient as they were well known, it was deliberately and carefully copied into the act from the treaty itself, and the reason was that it was in the treaty and Congress was perfectly aware that it, like every other provision of the treaty, must be accepted or the whole treaty lost. The bill was passed in the House under a special rule reported by the Committee of Rules through Mr. Dalzell. Speaking for the Committee, Mr. Dalzell explained to the House that "the effect of the rule would be to cut off amendment," and in the debate justified this in the following language:

"Now, what outrage is there in refusing amendments to this bill? What is this bill? It is not

independent legislation. This is a bill to carry out a convention heretofore entered into by the President and the Senate with the Republic of Cuba. It is a bill to carry out a national pledge, to stand by the national honor, *and you, gentlemen, know that we must take that treaty as it is made or we must leave it.* An amendment to this bill would necessitate a new convention between the Republic of Cuba and the United States. * * *.

This is a bill to carry into effect *the provisions of a treaty already made*" (Congressional Record, November 16, 1903, pp. 115, 117).

II.

The Government further argues that because the President of Cuba complied with the injunction of the President of the United States that "the date when the convention shall go into effect in Cuba" should be the same as that fixed by the President for the United States (to wit, December 27, 1903), this Court should disregard the plain language of the treaty itself and of the act of our own Congress, and uphold instead the proclamations of the executives of the two countries.

The very question presented to this Court is, whether the interpretation put upon the treaty and the act by the President of the United States is or is not correct. If it be incorrect, it is difficult to see how it can be made correct by the fact that the President of Cuba at the behest of the President of the United States committed the same error. Neither in Cuba nor in the United States do proclamations of presidents make the law. If it be material for this Court to inquire what, since April 10, 1903, has been the law in Cuba with regard to the rates of duty to be imposed upon the merchandise mentioned in the treaty imported from the United States, it is, no doubt, in Cuba, as here, to the language of the treaty itself and the statute

passed under it and the decisions of the courts construing both, that the inquiry must be directed.

The inquiry is not, however, in the least material. If the treaty and the act of Congress secured to the Cuban consignors the right to sue on the basis of the right and to these importers the right to bring in these sugars at eighty per cent. of the regular rates, they cannot be deprived of the right because the Cuban Government may have taken a different view of its obligations to its citizens under the treaty, and exacted of them upon their importations into Cuba duties at a rate made illegal by the treaty. If so, presumably the courts of Cuba will afford to its citizens the needed redress. If they do not, it must be the citizens of Cuba and not those of the United States who shall suffer thereby.

III.

Criticism is now made by the Government upon the language of the New York protest. No such point was made in the Circuit Court on or before the Board of Appraisers; and the protest is beyond doubt sufficient. It advised the Collector and the Board of Appraisers, and both understood, that the importer claimed the benefit of the twenty per cent. reduction accorded by the treaty. Nothing more was required.

United States v. *Salambier*, 170 U. S., 621:

By the Court: "It does not appear that the Collector deemed the protest insufficient in form or unintelligible. Not complaining of any want of distinctness in the protest, he adhered to his decision as to the nature of the merchandise and the amount of duty, and, in pursuance of the statute, transmitted the protest, with the invoice and entry, to the Board of General Appraisers. The Board regarded the protest as sufficient in respect to form and distinctness. * * *

The object of the statute in requiring a protest was to distinctly inform the Collector of the position of the importer. In this instance it was impossible for the Collector to have read the protest without perceiving that his classification of the merchandise as dutiable under paragraph 239 of the Tariff Act at fifty per cent. ad valorem, was objected to; and that the importer claimed that under the law the goods were dutiable at two cents per pound."

Shaw v. *United States*, 122 Fed. Rep., 443:

(Circuit Court of Appeals, Second Circuit.)

By the Court: "If the importer had said, 'I claim that the said goods are free as tapioca,' it would have been sufficient under the rule laid down in United States *v.* Salambier, 170 U. S., 621. It is true that in the present case this was not done in terms, but the necessary consequence of the notice was to inform the Collector of the precise character of the importer's claim."

Respectfully submitted,

JOHN E. PARSONS,
JOHN G. JOHNSON,
H. B. CLOSSON,
For Importers.

FILE COPY.

In the Supreme Court of the United States.

October Term, 1905.

Office Supreme Court U.
FILED
APR 26 1906
JAMES H. MCKENNEY,

THE UNITED STATES,

Appellant,

against

AMERICAN SUGAR REFINING CO.,

Appellee.

No. 269.

BRIEF FILED BY HATCH & CLUTE FOR IMPORTERS HAVING INTERESTS SIMILAR TO THOSE OF APPELLEE.

EDWARD S. HATCH,
J. STUART TOMPKINS,
Counsel for M. J Dalton & Co.

APPEAL PRINTING COMPANY, 14-16 VESEY ST., NEW YORK

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In the Supreme Court of the United States,

OCTOBER TERM, 1905.

THE UNITED STATES,
Appellant,

against

AMERICAN SUGAR REFINING CO.,
Appellee.

No. 269.

Brief Filed by Hatch & Clute for Importers Having Interests Similar to Those of Appellee.

The importers whom we represent, M. J. Dalton & Co., have pending in the Circuit Court of the United States for the Eastern District of Pennsylvania, two suits involving importations of cigars from Cuba. In one of those suits the United States is appellant, in the other the importers are the appellants.

The issue involved in these suits is practically the same as the question now before this Court in the cases of the American Sugar Refining Co. vs.

United States and The Franklin Sugar Refining Co. vs. United States.

The merchandise covered by the Dalton cases consisted of cigars, which were manufactured in and imported from Cuba, and assessed for duty under Paragraph 217 of the Tariff Act of 1897, at the rates therein provided. The importers claimed that the cigars were subject to a twenty per cent. reduction in duty in accordance with the provisions of the treaty between the United States and Cuba proclaimed by President Roosevelt, December 17th, 1903.

Only one protest, 109712, is embraced in the appeal of the United States vs. M. J. Dalton Company, Suit No. 1720. The goods that were the subject of that protest originally arrived in New York and were sent to Philadelphia under the immediate transportation act in bond. They were entered for consumption at Philadelphia, and duties were paid on December 18, 1903, one day after the President issued his proclamation above cited, and the entry was liquidated January 19, 1904. Regarding this merchandise, the Board of General Appraisers in their decision rendered March 25th, 1905, known as *In re M. J. Dalton Company, T. D. 26214, G. A. 5989*, held that it was entitled to the twenty per cent. reduction as claimed, on the ground that the President did not have the power to postpone the operation of the treaty, until December 27th, 1903. From that ruling the Collector of Customs at Philadelphia appealed under instructions from the Treasury Department issued April 4th, 1905, known as T. D. 26231, and the appeal is known as *United States vs. M. J. Dalton Company, Suit No. 1720.*

All of the importations that are embraced in

M. J. Dalton Company vs. United States, Suit No. 1721, were made and entered for consumption at the Port of Philadelphia, subsequent to April 10th, 1903, and prior to December 17th, 1903; and as to the goods covered by those importations, the Board held that they were not subject to the twenty per cent. reduction on the ground that the Cuban Treaty did not take effect until December 17th, 1903, when it was proclaimed by the President, thus overruling the importer's claim, that it went into effect April 10th, 1903, the tenth day after ratifications were exchanged.

Article II of the convention between the United States and Cuba provides as follows:

> "During the term of this convention, all articles of merchandise not included in the foregoing Article I, and being the product of the soil or industry of the Republic of Cuba imported into the United States, shall be admitted at a reduction of twenty *per centum* of the rates of duty thereon as provided by the Tariff Act of the United States, approved July 24, 1897, or as may be provided by any tariff law of the United States subsequently enacted."

Article XI, fixing the time when the convention if approved, should go into effect, reads as follows:

> "The present convention shall be ratified by the appropriate authorities of the respective countries, and the ratifications shall be exchanged at Washington, District of Columbia, United States of America, as soon as may be before the Thirty-first day of January, 1903, and the convention shall go into effect on the tenth day after the exchange of ratifications, and shall continue in force for the term of five (5) years from date of going into ef-

> fect, and from year to year thereafter until the expiration of one year from the day when either of the contracting parties shall give notice to the other of its intention to terminate the same."

The exchange of ratifications occurred on March 31, 1903.

On March 19, 1903, the Senate of the United States adopted a resolution in these words:

> "This convention shall not take effect until the same shall have been approved by the Congress."

It did not change the terms of the treaty, merely requiring the approval of Congress before it should become binding.

On December 17, 1903, Congress gave its approval by an act entitled: "*An Act to carry into effect a convention between the United States and the Republic of Cuba, signed on the 11th day of December, in the year 1902.*" Section I of the Act of Congress provides:

> "That whenever the President of the United States shall receive satisfactory evidence that the Republic of Cuba has made provision to give full effect to the articles or the convention between the United States and the Republic of Cuba, signed on the eleventh day of December in the year nineteen hundred and two, he is hereby authorized to issue his proclamation declaring that he has received such evidence, and thereupon, on the tenth day after exchange of ratifications of such convention between the United States and the Republic of Cuba, and so long as the said convention shall remain in force, all articles of merchandise being the product of the soil or industry of the Republic of Cuba * * * and all other articles of merchandise being

the product of the soil or industry of the Republic of Cuba imported into the United States shall be admitted at a reduction of twenty *per centum* of the rates of duty thereon, as provided by the Tariff Act of the United States. * * *"

ARGUMENT.

I.

The treaty should be given effect in accordance with its terms as ratified by the contracting parties and approved by the Congress.

There can be no dispute but that, under the decisions in the insular cases, so called, a treaty is to be deemed in effect, with respect to the rights of individuals, upon the exchange of ratifications by the contracting parties, unless another date is therein fixed. The question of the necessity for action by Congress to execute the commercial convention with Cuba or make it operative as a measure affecting the revenue has not been raised, as it has been assumed to be effective by virtue of the Act of Congress approving it, rather than by its ratification as a treaty, the convention itself providing that it shall not take effect until approved by the Congress.

In the construction of treaties, as of statutes, it is a well established rule that every part of the treaty or statute should, if possible, be given effect. There is no difficulty in applying the rule here, for there is no real conflict between the two provisions relating to the time of taking effect. It was to be in effect ten days after ratifications

were exchanged, as originally contemplated, subject to its being approved by the Congress, either before or after the expiration of the ten days. At the time the ratifications were exchanged it could not have been assumed that the approval of the Congress would be had within ten days, for the Congress was not then in session. It is only where two provisions of a treaty or statute are irreconcilable that it becomes necessary to apply the rule that where there are conflicting provisions the latter will control. In the addition of the Senate's amendment there is no indication of any intention to make any alteration in the terms of the convention, but only to make the taking effect ten days after the exchange of ratifications conditional upon approval by the Congress.

The view taken of the matter by the Congress must be sought for in the Act which they passed approving the treaty or making it effective. The Act is entitled "An Act to carry into effect a convention between the United States and the Republic of Cuba, signed on the 11th day of December in the year nineteen hundred and two." No attempt was made to alter the time of taking effect fixed by the terms of the convention, but on the contrary the convention in the form in which it was presented to them was accepted and approved by the Congress. And if there had been any doubt as to their understanding of the time fixed in the convention, it is dispelled by the provision incorporated in the Act. The Act authorized the president, when he should have received satisfactory evidence that Cuba had made provision to give full effect to the convention, to issue his proclamation accordingly, and it was declared that thereupon "on the tenth day after exchange

of ratifications of such convention between the United States and the Republic of Cuba, and so long as said convention shall remain in force," the reduced rates of duty should be applicable. If it could be claimed that the ten days clause in the convention had been overlooked, it could not be claimed that there was any inadvertence in the provision of the statute. The ratifications had been exchanged months before the bill was passed by the Congress, but with that fact before it the deliberate enactment of the Congress was that the reduced rates of duty should be applied commencing on the tenth day after the exchange of ratifications, and continuing so long as the treaty should be in effect, which the terms of the treaty fixed at five years from the time of its taking effect.

Necessarily and designedly Congress did not attempt or intend to change or modify the terms of the treaty; because if the terms had been changed Cuba would have been free to reject the treaty. The act is entitled: "An Act to carry into effect, etc." How could it carry the convention into effect if it varies its terms?

There can be no question here but that a past time was deliberately fixed. There is no ambiquity in the language used, so that there is no room for construction. It was said in United States vs. Trans-Missouri Freight Association, 166 U. S., 290, at page 318, that "the only proper way to construe a legislative act is from the language used in the act."

It is no objection to the plain language of the statute that it has been the policy of the legislature to make tariff acts operative at a date subsequent to their passage in order to give notice of the change in rates. In St. Paul, etc., Ry Co.

vs. Phelps, 137 U. S., 528, at page 536, this Court said:

> "* * * where a statute * * * is clear and free from all ambiguity, we think the letter of it is not to be disregarded in favor of a mere presumption as to what is termed the policy of the government. * * *"

The statute approving the convention clearly expresses the intention of the Legislature, that the convention should be in effect from the time agreed upon by the contracting parties in the convention itself, and there could be no ground for seeking the intention of the Legislature outside of the terms of the statute. Under the settled rules of construction it cannot be presumed that the Congress meant something other than it said.

II.

The President had no power to postpone the time of taking effect of the treaty.

On the day when the Act approving the treaty was passed, the President issued a proclamation reciting that he had received satisfactory evidence that the Republic of Cuba had made provision to give full effect to the articles of the convention, and declaring the convention "to be in effect on the tenth day from the date of this my proclamation."

There is no authority whatever for the President's postponement of or in any way alone determining the time of taking effect of the convention, either in his treaty-making powers, his participation in the law-making power, or in the statute approving the

convention, but on the contrary, his action was in contravention of the requirements of all three.

The President's treaty making power is only that which is given him by Article II, Section 2 of the Constitution, providing that

> "He shall have power, by and with the advice and consent of the Senate, to make treaties, provided two thirds of the Senators pesent concur."

Alone, he could no more fix the time of taking effect of a treaty than he could alter any other provision of the treaty. Every act of his in relation to a treaty must be concurred in by the Senate. Even with the concurrence of the Senate he could not alter any provision of the treaty or annex to it a provision that was never presented to the other contracting government. It had been agreed, by the terms of the treaty, that it should be in effect ten days after the exchange of ratifications, subject to the approval of the Congress. It had never been contemplated that it should only become effective at such time as the President should declare it to be in effect, for if he could postpone it ten days, he could postpone it a year, or any other period of time.

If the time of taking effect be regarded as fixed by the taking effect of the statute approving it, the President has no power in any way to postpone the taking effect of a statute, except as he shall, in the manner prescribed by the Constitution, hold it until the expiration of the time within which it may become a law without his signature. Otherwise any act must become a law, if at all, in the form, and in all respects according to its terms as passed by the Congress.

The Act approving the convention expressly fixed the time when it should be in effect. The only action required on the part of the President was his proclamation that he had received evidence that Cuba had made provision for giving effect to the convention, and it was enacted that thereupon, "*on the tenth day after exchange of ratifications*," the reduced rates provided by the convention would be in effect, and continue so long as the treaty should remain in force.

As the convention was not entered into by virtue of the provisions of Sections 3 or 4 of the Tariff Act of 1897, relating to commercial agreements, the President's powers under those sections are not material to be considered.

The action of the President is so entirely without authority or support that there could be no ground for fixing December 27th, 1903, as the date on which the treaty took effect. Upon the President's proclamation that he had received evidence that Cuba had made provision for giving effect to the convention, it immediately became applicable, by force of its terms and those of the Act of Congress, to the duties on all imports from Cuba from the tenth day after the ratifications had been exchanged.

Dated , 1906.

EDWARD S. HATCH,
J. STUART TOMPKINS,
Counsel for M. J. Dalton & Co.

Supreme Court of the United States.

No. 269.—October Term, 1905.

The United States, Appellant, vs. The American Sugar Refining Company.	Appeal from the Circuit Court of the United States for the Southern District of New York.

[May 28, 1906.]

The question in the case is whether certain sugars which were imported between the 12th of June and the 28th of September, 1903, were chargeable with full duties under the tariff act of July 24, 1897, or were entitled to twenty per cent reduction of duties prescribed by that act, under the treaty between the United States and Cuba of the date December 11, 1902, and an act of Congress of December 17, 1903. The answer to the question depends upon when the treaty went into effect, whether upon the 10th of April, 1903, or the 27th of December, 1903. The appellant contends for the former and the appellee for the latter date. Duties were assessed under the act of 1897 without reduction. Protests were filed and an appeal taken to the board of appraisers, who sustained the collector. The decision of the board was reversed by the Circuit Court. The treaty provided, (33 Stat. 2136, 2142,) among other things as follows:

"The President of the United States of America . . . and the President of the Republic of Cuba . . . have in consideration of and in compensation for the respective concessions and engagements made by one to the other, as hereinafter recited, agreed, and do hereby agree upon the following articles for the regulations and government of their reciprocal trade, namely:

Article II.

"During the term of this convention all articles of merchandise not included in the foregoing Article I, and being the product of the soil or industry of the Republic of Cuba imported into the United States, shall be admitted at a reduction of 20 per centum of the rates of duty thereon, as provided by the tariff act of the United States approved July 24th, 1897, or as may be provided by any tariff law of the United States subsequently enacted."

Article XI was as follows:

"The present convention shall be ratified by the appropriate authorities of the respective countries, and the ratifications shall be exchanged at Washington, District of Columbia, United States of America, as soon as may be before the thirty-first day of January, 1903, *and the convention shall go into effect on the tenth day after the exchange of ratifications*, and shall continue in force for the term of five (5) years from date of going into effect, and from year to year thereafter until the expiration of one year from the day when either of the contracting parties shall give notice to the other of its intention to terminate the same."

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By supplemental treaty signed January 26, 1903, (33 Stat. 2145,) it was provided that "the respective ratifications of the said convention shall be exchanged as soon as possible, and within two months from January 31, 1903."

March 19, 1903, the Senate added the following amendment at the end of Article XI: "This convention shall not take effect until the same shall have been approved by the Congress."

On March 31, 1903, ratifications were exchanged. At this date Congress was not in session, but was convened in special session November 9, 1903, and passed on December 17, 1903, (33 Stat. 3,) an act entitled: "An act to carry into effect a convention between the United States and the Republic of Cuba, signed on the 11th day of December in the year 1902." Section 1 provides as follows:

"That whenever the President of the United States shall receive satisfactory evidence that the Republic of Cuba has made provision to give full effect to the articles of the convention between the United States and the Republic of Cuba, signed on the eleventh day of December, in the year nineteen hundred and two, he is hereby authorized to issue his proclamation declaring he has received such evidence, *and thereupon, on the tenth day after exchange of ratifications of such convention* between the United States and the Republic of Cuba, *and so long as the said convention shall remain in force*, all articles of merchandise being the product of the soil or industry of the Republic of Cuba, which *are now* imported into the United States free of duty, *shall continue* to be so admitted free of duty, and all other articles of merchandise being the product of the soil or industry of the Republic of Cuba imported into the United States *shall be admitted* at a reduction of twenty per centum of the rates of duty thereon, as provided by the tariff act of the United States approved July twenty-fourth, eighteen hundred and ninety-seven, or as may be provided by any tariff law of the United States subsequently enacted. The rates of duty herein granted by the United States to the Republic of Cuba are and shall continue *during the term of said convention* preferential in respect to all like imports from other countries: *Provided*, That while said convention is in force no sugar imported from the Republic of Cuba, and being the product of the soil or industry of the Republic of Cuba, shall be admittted into the United States at a reduction of duty greater than twenty per centum of the rates of duty thereon, as provided by the tariff act of the United States approved July twenty-fourth, eighteen hundred and ninety-seven, and no sugar the product of any other foreign country shall be admitted by treaty or convention into the United States while this convention is in force at a lower rate of duty than that provided by the tariff act of the United States approved July twenty-fourth, eighteen hundred and ninety-seven: *And provided further*, That nothing herein contained shall be held or construed as an admission on the part of the House of Representatives that custom duties can be changed otherwise than by an act of Congress originating in said House."

The same day (December 17, 1903) the President issued his proclamation, (33 Stat. 2136,) which, after setting forth the treaty and the act of

Congress and reciting the above facts, together with the fact that ratifications of said convention had been exchanged on March 31, 1903, declared:

"And whereas satisfactory evidence has been received by the President of the United States that the Republic of Cuba has made provision to give full effect to the articles of said convention:

"Now, therefore, be it known that I, Theodore Roosevelt, President of the United States of America, in conformity with the said act of Congress, do hereby declare and proclaim the said convention, as amended by the Senate of the United States, to be in effect *on the tenth day from the date of this my proclamation.*"

After stating the case as above, Mr. Justice McKENNA delivered the opinion of the Court.

The treaty as drafted and presented to the Senate provided for an exchange of ratifications at Washington as soon as might be before the 31st day of January, 1903, and should "go into effect on the tenth day after the exchange of ratifications." A supplemental convention became necessary, and an exchange of ratifications was provided to be "as soon as possible and within two months from January 31, 1903." But subsequent to that date, to wit, March 19, 1903, the Senate added the amendment: "This convention shall not take effect until the same shall have been approved by the Congress." Between the treaty, therefore, and the amendment there was an emphatic difference. The date at which the instrument should go into effect was changed. It cannot be said that the treaty provision related to time and the amendment to sanction merely and adopted the time of the treaty. To do this would be to interpret the words of the treaty one way and the same words in the amendment another way. We start, then, with the proposition that not the treaty, but the act of Congress, was to fix the date that the treaty should take effect. What date Congress fixed is the question to be considered. It was certainly competent for Congress (with the consent of Cuba) to have given the treaty retrospective, immediate or prospective operation. Which did Congress do? And in reply we are to remember there is a presumption against retrospective operation, and we have said that words in a statute ought not to have such operation "unless they are so clear, strong and imperative that no other meaning can be annexed to them, or unless the intention of the legislator cannot be otherwise satisfied." (*United States* v. *Burr*, 159 U. S. 78.) On the other hand, it must be admitted that there are words in the act of Congress which, if not of themselves, yet in connection with events, may be said to look to a retrospective operation. It is not, however, an unusual judicial problem to have to seek the meaning of a law expressed in words not doubtful of themselves, but made so by circumstances or the objects to which they come to be applied.

Both the treaty and the act of Congress concern tariff duties, and "the usual course in tariff legislation," we have said, "has been, inasmuch as some time is necessary to enable importers and business men to act understandingly, to fix a future day at which the statutes are to become operative." (*United States* v. *Burr*, *supra*.) And these remarks have application here. The treaty, it may be admitted, was intended as a beneficial concession to Cuba. But conditions in the United States were also to be considered, and we cannot assume that this would have been overlooked by Congress when legislating. It is true, as urged by appellant, that the act of December 17 deals entirely with importations from Cuba, but it is those which would have the most disturbing effect, and on account of which business in like products would have to be accommodated. These as well as the considerations urged by the appellant must be kept in mind in seeking the meaning of Congress, and we repeat that, under the Senate amendment, it is the meaning of Congress, not the meaning of the convention independent of that of Congress, we are to ascertain. It was open to Cuba to reject the amendment; it was open to Cuba to reject the legislation. If she chose to accept both they became her contracts.

Turning to the act of December 17 we find it expressed in the simple future tense, and this must be given weight. (*United States* v. *Goldenberg*, 157 U. S. 95, 102.) So far as the text of the act itself is concerned, all of its parts accord; all of its provisions are prospective but one. That pertained to the then present, the date of the act. It provided that all products which were imported free should continue to be admitted free. The provision is "all articles . . . which *are now* imported . . . free of duty *shall continue* to be so admitted . . ." This accords with and reinforces the prospective provisions, and was apparently used with deliberate and provident intention, making the act provide for the present and future, excluding the past, certainly not expressing it. Passing from the text of the act, an element of confusion appears. Ratifications had been exchanged between the United States and Cuba on March 1, 1903. The text of the act provides "that whenever the President *shall* receive satisfactory evidence that the Republic of Cuba has made provision to give full effect to the article of convention . . . he is hereby authorized to issue his proclamation declaring that he has received such evidence, and *thereupon*, on the tenth day after exchange of ratifications of such convention, . . . *and so long as said convention shall remain in force*, all articles of merchandise being the products of the Republic of Cuba, which are now imported . . . free of duty, shall continue to be admitted free of duty, and all other articles . . . shall be admitted at a reduction of 20% of the rates of duty thereon as provided in the tariff act of the United States approved July 24, 1897 . . ." The words of the act, therefore, refer

manifestly to an event to occur, which seemingly had already occurred, and upon such event, it is contended, the treaty, by its own terms and by the act of Congress, took effect, to wit, "the exchange of ratifications" of the convention. To this the Government replies that Congress, not being in session at the time, was ignorant that ratifications had been exchanged, and framed its legislation with the view that some further provision by Cuba was necessary. If we may not accept the explanation of Congress's ignorance it is not unreasonable to suppose that Congress considered it was still open to Cuba to accept or reject the treaty, and to make sure of her acceptance before the treaty should go into effect in the United States. This view satisfies completely the text of the act. We cannot suppose that if Congress intended to give retrospective operation to the act it would have used words that expressed the contrary. The day at which the treaty should operate was important, and would necessarily be ever present in mind, and it was of easy expression. Future time and past time are directly opposite, and by no inadvertence or intention can we believe or suppose that Congress, having in mind and purpose the distinction between the past and the future, should use language that expressed the one while it meant to provide for the other.

There is another important fact. The treaty was a reciprocal arrangement and intended to go into effect coincidently in the United States and Cuba. The two nations provided for this. On the day the President approved the act of Congress he issued his proclamation declaring that the treaty should go into effect on the 27th day of December. On the 17th of December the President of Cuba also issued his proclamation, stating that Congress had approved the treaty in accordance with the requirements of Article XI, and declaring that the treaty should take effect in Cuba on the day named in the proclamation of the President of the United States—December 27, 1903. This coincident operation is of the very essence of the convention. It would indeed be anomalous if a treaty which provided for reciprocal concessions should be in operation in one nation eight months before it was in operation in the other. And this is not adequately answered as appellee answers it, by saying that the President of Cuba and the President of the United States were both mistaken as to the date of the operation of the treaty, and their mistake could not affect the rights of importers. Certainly not if a mistake could be conceded. But the action of the Presidents is proof against the existence of mistakes. It shows the understanding of the executives of the two countries and affords confirmation of the view that Congress contemplated action subsequent to its legislation to put the treaty into effect.

The judgment of the Circuit Court is reversed and the case remanded with directions to affirm the order of the Board of General Appraisers.